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Supreme Court, U.S.
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NO.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1996

AHMED AND REHAB AMER,
Petitioners,
v.

MICHIGAN FAMILY INDEPENDENCE AGENCY,
Respondent,

On Petition For Writ Of Certiorari
To The Wayne County Circuit Court,
State Of Michigan

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a petitioner whose parental rights have been previously terminated denied substantive and procedural due process under the 14th Amendment to the United States Constitution by a state probate court's ruling that an adoption divests that court of jurisdiction to grant a rehearing and/or new trial based on newly discovered medical evidence that might exculpate the petitioner of charges of child abuse and therefore warrant a reversal of the order terminating parental rights?

2. Is a petitioner and/or his/her child denied equal protection by a court's ruling that petitioner has offered that court newly discovered medical evidence sufficient to warrant a rehearing and/or new trial but that the adoption of the children has divested the court of jurisdiction to grant the rehearing and/or new trial where such a rehearing and/or new trial would have been granted to a petitioner whose rights had been terminated but whose children had not yet been adopted and/or whose children have a disability?

LIST OF PARTIES

Mohammed Ali Amer, Suehier Amer and Zinabe Amer, Minors

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STATEMENT OF THE CASE

A. Procedural History and Basis for Jurisdiction

On January 9, 1989, Judge Gladys Barsamian of the Wayne County Probate Court in Detroit, Michigan entered an order terminating Petitioners' parental rights to their three surviving children based on a finding that Petitioner Rehab Amer had caused the death of Samier Amer and that Petitioner Ahmed Amer had failed to protect Samier. Petitioners took an appeal of this order; however, the order was affirmed by the Michigan Court of Appeals on June 12, 1990, in an unpublished opinion. Petitioners then filed an application for leave to appeal to the Michigan Supreme Court, which was denied, and petitioned this Honorable Court for review, which was also denied.

After all appeals had been exhausted, Petitioners discovered new medical evidence and records that prove Samier Amer's death from a fall was fatal because Samier had osteogenesis imperfecta, which is often referred to as brittle bone disease.

Petitioners filed a petition for a new hearing in the Wayne County Probate Court in early December 1995 based on this new evidence, but that petition was summarily dismissed without a hearing. Appendix (hereinafter "App.") A. Petitioners then took an appeal to the Wayne County Circuit Court where they made procedural and substantive due process and equal protection arguments in both their briefs and in oral arguments. On June 27, 1996, after oral arguments, Circuit Court Judge Amy Hathaway found that was sufficient evidence to warrant a new trial on the issue of whether Petitioner had abused Samier. Notwithstanding such proffered evidence, however, Judge Hathaway ruled that the fact that the children had been adopted had divested the Probate Court and therefore the Circuit Court of jurisdiction to order the new hearing or trial. App. B. Additionally, Judge Hathaway found no violation of Petitioners' Constitutional Rights. App. C.

Petitioners' application for leave to appeal in both the Michigan Court of Appeals (App. D) and the Michigan Supreme Court were denied (App. E). It is from the Supreme Court's order dated May 30, 1997 that Petitioners appeal to this Honorable Court. This Court has jurisdiction pursuant to Article III, Section 2, of the United States Constitution.

B. Substantive Facts

Petitioners, Ahmed and Rehab Amer (the "Amers") are the biological parents of Mohammed Ali Amer, a boy born 12/11/82; Samier Amer, a boy born 11/18/83 (deceased 11/22/85); Suehier Amer, Samier's twin sister, born 11/18/83; and Zinabe Amer, a girl born 12/09/86 (hereinafter the "children"). Samier and Suehier Amer were delivered by Caesarian section on 11/18/83 at Oakwood Hospital in Dearborn, Michigan. Petitioners have newly discovered evidence including previously unobtainable medical records and expert medical opinions that establish that the cause of Samier Amer's death was an accidental fall in the bathtub. Petitioners and those who knew Samier will testify at a rehearing that Samier displayed the classic physical characteristics of osteogenesis imperfecta[1] including blue sclera, discolored and malformed teeth, and skeletal deformities of his legs, which caused him to wear leg braces at night and corrective shoes during the day.

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[1] Osteogenesis imperfecta is an inherited condition in which the bones are abnormally brittle and subject to fractures. Fractures from osteogenesis imperfecta can occur in intrauterine life in which case the child is born with deformities (o. imperfecta congenital) as well as when the child begins to walk (o. imperfecta tarda). The condition is usually attended by blue coloration of the sclera of the eyes and sometimes by osteosclerotic deafness. Osteogenesis imperfecta is also known as brittle bone disease. Dorland's Illustrated Medical Dictionary 1106 (25th ed. 1974).

On December 15, 1983, Rehab Amer took Samier to see Dr. Sheldon A. Schore.[2] Mrs. Amer informed Dr. Schore that she was concerned about Samier because he "cried when [he was] picked up or even touched." App. F.[3] Furthermore, Mrs. Amer reiterated to Dr. Schore that Samier "was difficult to feed, lazy, sucked his thumb frequently, and had to be forced fed...." App. G. Mrs. Amer returned to Dr. Schore on January 20, 1984 with the same complaint. App. F. In addition to reiterating her worries of December 15, 1983, Mrs. Amer indicated concern due to a limpness in Samier's right arm. App. G. Despite the fact that Dr. Schore had seen Samier a total of three times at that point, he had never noted any suspicion of child abuse and did not consider it at this time. See id.

The absence of any outward indications of child abuse comports with Dr. Paterson's observation that in patients with temporary bone disease, "it is a paradoxical but frequent finding that fractures may not be accompanied by the superficial evidence of trauma that might be expected."[4] Although Dr. Paterson never had access to the radiographs taken on January 20, 1984 his analysis of the radiographs taken on January 30, 1984, indicates that this fracture was likely to have occurred between January 16, 1984 and January 20, 1984. App F. If these fractures were caused by child abuse, it is likely that there would have been obvious bruises seen by Dr. Schore on January 20, 1984. Id. at 5.

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[2] Dr. Sheldon A. Schore was the family pediatrician.

[3] Dr. Colin R. Paterson is a world renowned specialist in osteogenesis imperfecta and other related bone diseases. If Petitioners are granted a rehearing they intend to call Dr. Paterson as their medical expert. In 1994, Dr. Paterson reviewed Samier's available medical records at Petitioners' request, including Dr. Shores' records produced as the children's pediatrician.

[4] Paterson, Colin R. and Susan J. McAllion, "Osteogenesis imperfecta in the differential diagnosis of child abuse." 299 British Medical Journal 1451 (December 1989).

Dr. Schore did not find the need to question Mrs. Amer because he had considered her an overly protective mother and instead referred her to Dr. Robert Mandell of Botsford General Hospital. App. G. Once at the hospital, radiographs were taken and "[t]he child was noted to have an impacted fracture of the right shoulder." Id. It was also noted that Samier had "a fracture of the mid-shaft of the left clavicle." App. F. Dr. Mandell isolated the shoulder and began treatment. Id.

The Amers, again, reported to Dr. Schore's office on January 26, 1984. On this occasion, the Amers, when questioned by Dr. Schore about the source of the injuries, emphatically "denied any acts of abuse or history of trauma to the infant...." App. G. A follow up was conducted at Botsford Hospital on January 30, 1984. Results of Samier's blood tests indicated "the presence of mild anemia and hypogammaglobulanemia." Id. According to the medical expert, Dr. Paterson, anemia is an indicator of "temporary brittle bone disease." App. F at 6. Samier's anemia was treated by Dr. Schore by "weekly gamma globulin injections, and the infant was placed on oral iron supplement." App. G. Samier was given these treatments on February 6th, 13th, and 20th, at which time "Mrs. Amer continued to complain of the child's [sic] difficult feeding problem." Id. These feeding problems were later independently confirmed by hospital staff. App. H. On examination, no bruises were noted on Samier's body.

During Dr. Schore's last evaluation of Samier on February 20, 1984, and at Mrs. Amer's request, he referred Samier to Oakwood Hospital. App. G. On February 27 an March 6, 1984, Samier was seen and examined at Associated Physicians by Dr. Carolyn Johnson when the feeding problem was again mentioned to the attending physician. App. F at 2. Finally on March 12, 1984, doctors admitted Samier to Oakwood Hospital "after the parents had telephoned the doctor because of Samier's wheeze and cough and their continuing worry about his poor feeding." Id. Mrs. Amer reported to the physicians that Samier has difficulty feeding "in contrast to his twin sister Suehier." App. H.

At Oakwood Hospital, the physician noted that Samier "was a comfortable male infant in no obvious distress." Id. However, the physician noted the fractures originally seen by Dr. Mandell on radiographs taken on January 20, 1984. The physician also observed "superficial bites on both soles of his feet and also on the left torso and also on the interscapular region." App. H. The bite marks were later attributed to a babysitter, Waafa Bazzi, who was fired as a result.[5] App. I. Contrary to the State's contentions, the physicians did not conduct invasive metabolic and bone disease examinations to determine any underlying problems. The physician noted that "[h]e had a metabolic screen performed which showed slight generalized aminoaciduria and a suspicious mucopolysaccharide test which result did not come until after his discharge and will be followed up in the office." App. H. This finding was never followed up. In addition, to rule out any underlying medical causes for the fractures, the physician noted "[h]is calcium and phosphorus levels were all within normal limits which ruled out organic bone disease leading to the bone injuries." Id. at 2. Other than calcium and phosphorus blood levels, no orthopedic testing was done to determine any bone abnormalities.[6]

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[5] It is important to note that Ms. Bazzi was not independently investigated by the Department of Social Services. See App. I.

It is important to point out that in cases of osteogenesis imperfecta, while "the bones are usually deficient in mineral and matrix content per unit volume," sometimes "osteogenesis imperfecta with fractures may be observed in association with normal bone density suggesting that there is probably reduced tensile strength in each lamella of osteogenesis imperfecta bone."[7] Therefore, a normal level of calcium and phosphorus does not necessarily rule out osteogenesis imperfecta. Additionally, "[t]he degree of trauma associated with fractures in osteogenesis imperfecta is highly variable...[and] fractures may be detected without the patient or family being aware of any trauma." Id. Thus Petitioners' ignorance regarding the cause of Samier's fractures is conceivable and plausible. App. F. Yet another diagnostic indicator is the fact that in cases of "[o]steogenesis imperfecta diagnosed in the first 2 years of life...long bone fractures are most commonly seen." Samier's injuries were those commonly observed in children of Samier's age who have been diagnosed with osteogenesis imperfecta. Moreover, the injuries included "a fracture in the left femur, the left tibia and the right humerus" accompanied by a fracture of the mid-shaft of the left clavicle. App. I.

Because of a report filed by Oakwood Hospital on April 2, 1984, the Department of Social Services ("DSS") filed a petition for the probate court to assume jurisdiction of Samier based on suspected child abuse, and Samier was placed with his paternal grandmother. During an extended visitation with his parents on November 21, 1985, Samier suffered a fall int the bathtub when his mother stepped away to answer the telephone. Samier died the following day, and the autopsy report noted that death was due to injury to the back of the head. During the autopsy a bruise was noted on the left cheek, but all other body organs were normal and without injury. The bruise on the left cheek appears in a picture taken two months prior to the deadly fall when Samier fell while walking. App. J. Dr. Sawait Kanluen, the same medical examiner who performed the autopsy and classified the death as a homicide, testified at trial that "if [the death inducing injury] is [from] a fall it has to be about two or three stories high. That kind of height would generate enough speed when the head hits the ground It had to be that kind and not just a chair." App. K. However, in a well documented case of an individual with brittle bone disease, "an 18-year-old boy fell from his wheelchair and struck his head...[and] died approximately six hours after his injury during the evacuation of bilateral epidural hematomas."[8] This serves as an example of how even a small fall with resulting head injury can have fatal effects on persons with osteogenesis imperfecta or other similar metabolic bone disease.

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[6] At the time this hospital report was made, Samier had been placed in foster care by the DSS, and the State had the obligation to follow up on any reports generated during the pendency of the foster care. Furthermore, Petitioners did not receive this medical report until 1994.

[7] See Gertner, Joseph M. And Leon Root, "Osteogenesis Imperfecta: Pathologic Fractures in Metabolic Bone Disease," The Orthopedic Clinics of North America Vol. 21 No. 1, January 1990.

Within two days after Samier's tragic death, both Suehier and Mohammed Ali were taken into DSS' protective custody based on its suspicion that one of Petitioners had intentionally killed Samier. Before terminating Petitioners' parental rights, the Probate Court found that one of Petitioners had intentionally killed Samier, that the other had failed to protect him, and that both Petitioners therefore posed an imminent threat of danger to Mohammed Ali and Suehier. Petitioner Rehab Amer was charged with second degree murder on February 6, 1986 for the death of Samier Amer. On August 13, 1986, Rehab Amer was acquitted of that charge by a Wayne County jury while she was pregnant with Zinabe. App. L.

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[8] See Sayre el al, "Nontraumatic Subdural Hematoma in a Patient with Osteogenesis Imperfecta and Renal Failure." American Journal of Emergency Medicine Vol. 5 No. 4 (July 1987)(citing Pozzati E., Poppi M. and Gaist G. "Acute bilateral extradural hematomas in a case of osteogenesis imperfecta congenita." Neurosurgery 1983:13:66-68).

After repeated requests from Petitioners, Suehier and Mohammed Ali were eventually examined by court order to determine whether they had osteogenesis imperfecta on March 21, 1986 and June 6, 1986. App. M. The exams were both cursory, lasting only 10 to 15 minutes, and inconclusive. App. N. Drs. Majed Dasouki and Robert P. Erickson of the University of Michigan Medical Center found Mohammed's examination negative for osteogenesis imperfecta; however, they noted that Suehier, Samier's twin, had both a "mild blue sclerae and a small bony prominence on the anterior aspect of the left tibia." App. M. Family pictures dated September 24, 1985 depict blue sclerae in both twins. Limiting their analysis to the physical examination and the apparent lack of family history, the doctors stated "we cannot make the diagnosis of osteogenesis imperfecta." Id.

The report further stated that it was unfortunate that "there is no specific genetic test for the majority of patients suspected to have" osteogenesis imperfecta. Id. However, it should be noted that blue sclerae is one of the elements of osteogenesis imperfecta. According to Drs. Joseph M. Gertner and Leon Root, "[i]ts presence or absence constitutes one of the major classification variables in" brittle bone disease.[9] Therefore, it is significant that Drs. Dasouki and Erickson failed to make the diagnosis of osteogenesis imperfecta for Mohammed Ali and Suehier Amer, such diagnosis could not be ruled out in light of such cursory exams, particularly in the case of Suehier Amer.

The Amers had a fourth child named Zinabe on December 9, 1986. A December 11, 1986 social work note indicated a request from Mrs. Amer to have her newborn daughter, Zinabe, tested for osteogenesis imperfecta. App. O. This test was not conducted prior to the DSS' removing Zinabe from the hospital. Zinabe was removed on December 10, 1986, and a nursing note indicated "mother crying openly...speaking softly." App. P. Zinabe was never actually tested for osteogenesis imperfecta.[10]

After Mrs. Amer's acquittal, at a dependency and neglect dispositional hearing held on December 15, 1986, the Hon. Martin T. Maher as the then presiding Probate Court judge [11] opined, "[I]t's my ultimate objective to return the children to the parents as quickly as possible with the caveat that those children remain safe." App. R.

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[9] Gertner, Joseph M. and Leon Root, "Osteogenesis Imperfecta: Pathologic Fractures in Metabolic Bone Disease," The Orthopedic Clinics of North America Vol 21, No. 1 January 1990.

[10] In fact, in mid-1987, during a visitation with their daughter, Zinabe, Petitioners noticed that Zinabe had difficulty grasping objects due to a stiff little finger. Petitioners pointed this out to the DSS workers, and subsequently the DSS told Petitioners that this was nothing to be concerned about. In 1994, after finally receiving their children's medical reports after years of obstruction, Petitioners found that Zinabe had either a healed fracture or a congenital abnormality that was treated with a splinting technique. Interestingly, the medical reports note that the medical treatment was complicated by the lack of a family medical history because the DSS had not provided this information to the doctors. See App. Q.

[11] Judge Maher subsequently was succeeded on the case by Judge Barsamian.

Prior to the termination of parental rights, the court appointed psychologist Dr. Ralph Epstein to evaluate the fitness of Petitioners as parents. In an affidavit dated June 22, 1989, App. S, Dr. Epstein attested to the disturbing nature of a telephone call he had had with Martha Carey of the Judson Center on July 14, 1987.[12] Dr. Epstein noted that rather than being asked to provide an opinion about Petitioners, he was requested to find Petitioners unfit as parents. According to Dr. Epstein, the call "constituted a manipulative attempt to ascertain my testimony and to influence it in a direction favorable to the Judson Center's workers' belief that the Amers were unfit to care for their children insofar as they had not admitted to responsibility for the death of Samier." App. S.

Judge Barsamian, the presiding Probate Court judge, stated that "again, it seems that the parents have done everything that we've asked them to do and they have gone to parents anonymous. They have done everything, but one thing they have not done is that one goal...relating to the acknowledgment of the killing of their child by one of them." In commenting about Dr. Epstein, Judge Barsamian noted, "I was disappointed that the therapist that we referred the Amers to wouldn't deal with the issue that they had been referred there to deal with, but instead other issues were dealt with." App. T.

The Probate Court terminated Petitioners' parental rights to Mohammed Ali, Suehier, and Zinabe Amer on January 9, 1989. In her January 9, 1989 ruling, Judge Barsamian noted "[t]hat it would have required an adult to administer the injury that caused death." App. T. The court further noted that it was "the court's belief that there cannot be return of these children to these parents short of verbalization of guilt...." App. U. (emphasis supplied). Judge Barsamian made it clear that Petitioners would have to admit the murder of their son to avoid termination of their parental rights to the other children. Id.

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[12] The Judson Center is an independent agency working in conjunction with the DSS.

Eventually, Petitioner Rehab Amer heard about the similar plight of Mr. and Mrs. Michael Martin. See In re Martin, 423 N.W.2d 327 (Mich. 1988). The Martin case was similar to this case in the following respects: the infant cried when picked up, had unexplained broken bones, was taken to the emergency room because of listlessness and fever, was x-rayed, was referred for possible child abuse to the DSS, and was placed in DSS' protective custody. Id.

The Martins moved the Wayne County Probate Court for a rehearing based on newly discovered evidence from Dr. A.M. Parfitt and Dr. Colin Paterson that Ashley Martin had suffered from a bone disease and/or metabolic disorder which explained her broken bones. While Judge Frances Pitts of the Wayne County Probate Court denied the Martins' motion for rehearing, the Wayne County Circuit Court, on appeal, ordered the Probate Court to conduct a proper statutory rehearing within twenty-one days. After the required rehearing, the court ruled that it would not reconsider the issue of what had caused Ashley's injuries. On appeal, however, the Court of Appeals reversed the probate court and ordered a reunification plan, noting that not only did newly discovered evidence explain the injuries, but the prior theory of abuse was premised on the apparent lack of an explanation for the symptoms. In re Martin, 423 N.W.2d. at 335.

Ashley Martin was finally reunited with her parents after four years of separation. Dr. Paterson and Dr. Marvin Miller have reached the same conclusion in this case, App. F and App. V, but Judge Pitts (coincidentally the same judge who first denied the Martins a rehearing) denied Petitioners herein a rehearing.

After learning about the Martin case on a local Detroit television program, Petitioners contacted the Martin family and, through that contact, became aware of the experts the Martin family had consulted and offered at their rehearing: A.M. Parfitt, M.D., who has been the Director of Henry Ford Hospital's Bone and Mineral Research Laboratory since 1971, and Colin Paterson, M.A., D.M., MSc, FRCP, FRCPath, who is the Senior Lecturer and Honorary Consultant of the University of Dundee in Scotland. With the help of the Martin family Petitioners were finally able to get medical records for Mohammed Ali, Suehier, and Samier Amer from Oakwood Hospital, Botsford Hospital, and Children's Hospital and for Zinabe Amer from Providence Hospital and Beaumont Hospital. In fact, the Martin family helped Petitioners arrange meetings with Dr. Parfitt and Dr. Paterson. These experts in the field of osteogenesis imperfecta have reviewed Petitioners' children's medical records and have concluded, in their professional opinions, that Samier's initial injuries and the fatal skull fracture were not the result of child abuse but were wholly consistent with bone disease. App F. Dr. Paterson concluded his report on his review as follows:

> [T]he evidence I have reviewed points to the fact that bone disease is much more likely than non-accidental injury as a cause of Samier's fractures in 1984. The head injury in 1985 is likely to have occurred in a fall in the bath.

App. F.

C. Newly Discovered Evidence

Petitioners have uncovered their children's medical records and mysteriously received copies of medical claims relating to the children that were submitted for payment under Petitioner Ahmed Amer's Blue Cross policy through work years after the termination. Petitioners presented the actual insurance claims to the courts below as potential evidence of more medical problems. They also questioned in good faith whether their children had, in fact, been adopted. The continuing medical problems of the children were not known to Petitioners at the time of the termination proceedings. In fact, when Petitioners attempted to discover what medical services had been provided to their children and billed to Petitioners' policy, they were thwarted by the fact that their rights had been terminated.

In summary, Petitioners could not and did not obtain medical records including radiographs relating to their children until late 1994, and then only after assistance from Michael Martin, an unrelated third party. Petitioners could not and did not obtain a copy of Samier Amer's x-rays despite a Freedom of Information Act (FOIA) request in early 1995 and subsequent litigation to do so. Immediately after experts concluded that Samier Amer had brittle bone disease, Petitioners contacted their present attorney to re-open their case.

On December 4, 1995, a Motion for Rehearing and/or New Trial And/Or Relief from Order in the Probate court was filed. In that motion, Petitioners here, Appellants below, relied on MCR 5.992. See App. W. The case was assigned to Judge Frances Pitts, Wayne County Probate Court, Juvenile Division. On December 5, 1995, one day later, the Probate Court issued an order dismissing Petitioners' Motion for the following reasons: (1) lack of subject matter jurisdiction sufficient to grant the relief requested, (2) the request for rehearing was not timely filed, (3) a party has 21 days in which to file a petition for rehearing and the matter had been filed nearly seven years after the hearing date, and (4) MCR 5.992 is discretionary and allows a court to entertain an untimely motion for good cause shown. App. A.

Petitioners filed a Claim of Appeal from this order on December 26, 1995. The appeal was assigned to Judge Amy Hathaway, Wayne County Circuit Court. On June 27, 1996, after hearing oral arguments, the Circuit Court ruled that Petitioners' parental rights override all arguments of timeliness. The Court further noted that when there is a conflict between a statute (M.C.L. § 712A.21 (1997)), App. X, allowing an appellant to file a petition for rehearing within 20 days of the termination of parental rights, and a court rule (MCR 5.992), App. W, the court rule prevails pursuant to MCR 1.104 (App. Y). See p. 56 of transcript, App. C. Therefore, the court held that MCR 5.992 allows a court to exercise the discretion granted under the court rule if good cause is shown to conduct a rehearing on the newly discovered medical evidence.

In fact, the Circuit Court stated: "[T]he Court believes there has been sufficient evidence to go back for a new trial on the issue of whether there was an abuse or whether there was brittle bone disease." App. C at 62-63 (emphasis supplied). However, the Circuit Court further held that if the children had been adopted, then the Probate Court no longer had jurisdiction and did not, therefore, abuse its discretion in denying Petitioners' request for a rehearing. Id. The court did not apply the standard for review established by MCR 5.992 in deciding whether to grant the rehearing on the newly discovered evidence.

This summary dismissal of Petitioners' petition for rehearing undermined all standards of fairness and justice recognized by law. If, instead, the petition had been granted and the newly discovered medical evidence had been offered, the DSS presumably could have reasserted its evidence of abuse, and then any proceedings involving Petitioners' parental rights would have followed the Michigan Court Rules, specifically MCR 5.971-5.992. Those court rules would have provided both Petitioners, the DSS, and the Probate Court with appropriate standards for considering a termination or reinstatement of parental rights. When Petitioners' petition for a rehearing was denied, however, both Petitioners and the children themselves were summarily denied procedural Due Process on an issue relating to rights which are protected under the Fourteenth Amendment to the United States Constitution.

ARGUMENT

I. CERT SHOULD BE GRANTED IN THIS CASE BECAUSE THIS PETITION PRESENTS TO THIS COURT THE IMPORTANT ISSUE OF WHETHER NATURAL PARENTS WHO HAVE HAD THEIR PARENTAL RIGHTS WRONGFULLY TERMINATED SHOULD BE DENIED A HEARING AND/ OR A NEW TRIAL BASED ON NEWLY DISCOVERED MEDICAL EVIDENCE SOLELY BECAUSE AN ADOPTION ORDER HAS BEEN ENTERED.

A. Substantive Due Process

This Court has consistently protected the right to participate in a natural parent-child relationship as one of the most fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. See, e.g., M.L.B. v. S.L.J., __ U.S. __, (1996); 117 S.Ct. 555, 556-57 (1996) (quoting Boddie v. Connecticut, 401 U.S. 371 (1971)); Stanley v. Illinois, 405 U.S. 645, 652 (1972); May v. Anderson, 345 U.S. 528, 533 (1953); Skinner v. Oklahoma, 316 U.S. 535, 541 (1942); Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Moreover, the importance of this interest requires that any termination proceeding "must be accomplished by procedures meeting the requisites of the Due Process Clause." Santosky v. Kramer, 455 U.S. 745,753 (1981) (quoting Lassiter v. Department of Social Services, 452 U.S. 18, 37 (1981)).

Only when parents are unfit do the interests of the parents and the children diverge. See Santosky v. Kramer, 455 U.S. 745 at 760 (1981); see also In re Clausen, 502 N.W.2d 649, 666 (Mich. 1993). Accordingly, the denial of Petitioners' request for a rehearing was a denial of due process to Petitioners' children as well.

B. **Procedural Due Process**

Because a natural parent-child relationship is such a fundamental liberty interest protected by the Fourteenth Amendment to the United States Constitution, there is a heightened need for adequate safeguards that reinforce the fairness of the termination proceedings and avoid unnecessary or erroneous terminations. Santosky , 455 U.S. at 753, 759 (partly quoting Lassiter v. Department of Social Services, 452 U.S. 18, 27 (1981)) (emphasis added). Moreover, since many parents involved in termination proceedings are poor, uneducated, or minorities, the need to ensure fair and unbiased proceedings that do not infringe upon the Constitutional rights of due process is, to say the least, heightened.

In this case, Petitioners are Muslim immigrants who lack formal education, language skills, or substantial resources.[13] They are representative of citizens who may be unjustly charged with child abuse and who may be required to admit "guilt" for inexplicable injuries as the price of recovering their children from DSS' protective custody. This Court in Santosky noted that termination proceedings invoke the "subjective values of the judge"; that respondents are "often poor, uneducated, or members of minority groups"; and that "judgments based on cultural or class bias" often result. Santosky, 455 U.S. at 762-63 (citing Smith v. Organization of Foster Families, 431 U.S. 816 (1977)).

Moreover, procedural obstacles like requiring the advance payment of "record preparation fees" by parents both before appealing a court's termination of parental rights and before obtaining access to court records necessary to the appellate process run contrary to notion of Due Process in termination proceedings. See M.L.B., __ U.S. at __; 117 S.Ct. 555. Such policies effectively deny a parent the right to appeal a termination judgment by either making it financially impossible or, in the alternative, by denying the parent access to information which may be critical to the appellate process.

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[13] In fact, Petitioner Ahmed Amer came to the U.S. at 20 years old but quit school in Lebanon when he was 10 years old because of the civil war there. Ahmed Amer had had approximately six months of English lessons before emigrating. He worked in a factory during the termination proceedings. Petitioner Rehab Amer came to the U.S. from Lebanon at 14 years old and finished high school near Detroit. She knew no English when she arrived and was a stay-at-home mother at the time of the termination proceedings. Both Petitioners are devout Muslims and neither had had experience with the legal system prior to this case. While the court appointed an attorney for Petitioners at the beginning of the termination proceedings, Petitioners felt insecure about their representation and attempted to retain private attorneys with their meager income and assets throughout most of the proceedings.

The Court's ruling in M.L.B. applies to Petitioners because, despite FOIA requests and court subpoenas, the DSS never provided Petitioners with Samier's medical records during the termination proceedings. The difficulty in obtaining medical records prevented Petitioners from challenging the State's medical findings and from filing a timely appeal within 21 days of the termination order. Petitioners eventually acquired Samier's medical records through a third person, Michael Martin. Once records and experts/expertise became available that would exculpate Petitioners, their rehearing was denied based on an adoption order.

When fundamental human rights are at issue, the process that is "due" is heightened. Stanley v. Illinois, 405 U.S. 645 at 650-51 (1971). In this case, because Petitioners were denied any hearing on their newly discovered evidence, they were denied the most minimum due process that would have been appropriate, i.e., a simple evidentiary hearing.

The Circuit Court justified the denial of a hearing on the new evidence by holding that the adoption of the children had divested the Probate Court of any jurisdiction over the children. This reasoning begs the issue because adoption is wholly statutory. See In re Smith's Estate, 72 N.W.2d 287 (Mich. 1955); In re Garlow's Estate, 21 N.W.2d 178 (Mich. 1946); In re White's Adoption, 1 N.W.2d 579 (Mich. 1942). Children are not available for adoption unless parental rights have been properly terminated; accordingly, an adoption based on improperly terminated rights should not pose an effective bar to a rehearing on the validity of the termination order itself.

In the appellate courts below, Petitioners cited to In re Ives, a case in Michigan where an adoption was vacated based on improperly terminated parental rights. In re Ives, 23 N.W.2d

131 (Mich. 1946). In Ives, the natural parent's rights were terminated by default but without proper service of process. Petitioners' review of cases in other jurisdictions reveals that courts are willing to set aside adoptions where service is improper and where the court has improperly exercised *in personam* jurisdiction over one of the natural parents. See, e.g., In re Ives, 23 N.W.2d 131; Eckberg v. Benso, 537 N.E.2d 967 (Ill. App 1989); Matter of Adoption of R.M.P.C., 512 So.2d 702 (Miss. 1987); In re Adoption of Knipper, 507 N.E.2d 436 (Ohio. App. 1986); Blankenship v. Blankenship, 267 S.E.2d 751 (W. Va. 1980); Rodriguez v. Koschny, 373 N.E.2d 47 (Ill. App. 1978); In re Adoption of Hickey, 567 P.2d 260 (Wash. App. 1977); Hatgimisios v. Smith, 192 S.E.2d 270 (Ga. 1972).

Additionally, many jurisdictions set aside adoption orders that are obtained through fraud, undue influence, duress or mistake. In re Leach, 128 N.W.2d 475 (Mich. 1964); In re Neagos, 439 N.W.2d 357 (Mich. App. 1989); In re Kozak, 285 N.W.2d 378 (Mich. App.1979); Petition of Doe, 638 N.E.2d 181 (Ill.), cert. denied Baby Richard v. Kirchner and Doe v. Kirchner, 513 U.S. 994 (1994); In re Adoption No. 85365027, 525 A.2d 1081 (Md. App. 1986); Wade v. Geren, 743 P.2d 1070 (Okla. 1987); In re Adoption of Baby Boy B., 571 N.Y.S.2d 125 (N.Y. App. Div. 1991); Arnold v. Howell, 219 P.2d 854 (Calf. 1950); Adoption of Jones, 558 P.2d 422 (Okla. 1976); In re Adoption of Lori Gay W., 589 P.2d 217 (Okla. 1978); In re Kerr, 547 S.W.2d 837 (Mo. 1977); Davis v. Turner, 337 So.2d 355 (Ala. 1976); Regenold v. Baby Fold, Inc., 369 N.E.2d 858 (Ill. 1977).

The foregoing factual contexts deal generally with terminations that were entered by default or terminations that were achieved through an apparently voluntary release of parental rights that was later rebuked, usually due to fraud or mistake. Petitioners' case presents a third and new category: an "involuntary" termination of parental rights that is later discovered to be improper on its facts.

Petitioners have not found any case in which newly discovered evidence was offered to support a petition to vacate an order terminating an adoption or parental rights. Petitioners did find dicta, however, in a case where parental rights were terminated based on abandonment, indicating that newly discovered evidence should be considered on a par with fraud or mistake. In In re K.W.V., the court noted:

> Termination of parental status and rights must be viewed as intrinsically more serious than custodial awards of infants away from parents. Adoption, following termination of natural parental status, is final and not subject to abrogation except for defects such as fraud or **newly discovered evidence.**

In re K.W.V., 399 N.Y.S.2d 593, 595 (N.Y. Fam. Ct. 1977) (emphasis supplied). In Petitioners' case, the DSS was mistaken in its conclusion that osteogenesis imperfecta did not explain Samier's sudden death from a fall in the bathtub that should not have otherwise been fatal. If an order terminating parental rights can be set aside based on fraud or mistake, a termination order should be set aside if newly discovered evidence proves it improper.

In fact, Petitioners argued below that their newly discovered evidence would show that the Probate Court lacked subject matter jurisdiction ab initio because it would prove that Samier had not been abused and that therefore he and his siblings did not come within the statutory jurisdiction of that court. See M.C.L.A. § 712A.2(b)(2)(West 1994), App. Z (children are within the jurisdiction of the Probate Court if their "home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, or other custodian, is an unfit place for the juvenile to live in"). Without subject matter jurisdiction, the entire court proceedings that led to Petitioners' termination of parental rights is void ab initio. If the court in Ives would vacate an adoption order based on lack of *in personam* jurisdiction, the court in Petitioners' case should have considered new evidence which might have proven that the termination order had been entered by that court without subject matter jurisdiction.

Ives and other cases involving setting aside adoptions due to invalid jurisdiction hold that lack of jurisdiction, whether *in personam* or subject matter,[14] may be raised at any time and regardless of whether there is an order of adoption. The DSS and the Children's Attorney argued below that Petitioners were attempting to assert a collateral attack against the probate court's subject matter jurisdiction which is barred by In re Hatcher, 505 N.W.2d 834 (Mich. 1991). In response, Petitioners argued that Hatcher was decided in 1991, two years after their parental rights had been terminated. Because Hatcher established a new principle of law by overruling clear past precedent, Hatcher should not be applied retroactively to this case. See People v Phillips, 330 N.W.2d 336 (Mich. 1982); Jahner v Corrections Dep't, 495 N.W.2d 168 (Mich. 1992). Immediately after Petitioners' rights were terminated, they took an appeal on all issues known to them then, which was then permissible under existing law. See In re Ferris, 391 N.W.2d 468 (Mich. 1986); Fritts v Krugh, 92 N.W.2d 604 (Mich. 1958). See also In re Waite, 468 N.W.2d 912 (Mich. 1991) (good discussion of law preceding Hatcher). Accordingly, Petitioners' claims are not barred by Hatcher.

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[14] This Court has consistently held that subject matter jurisdiction may be challenged collaterally, or at any stage of legal proceedings. See Bender v. Williamsport Area School District, 475 U.S. 534 (1986), reh'g. denied 476 U.S. 534 (1986); Capron v. Van Noorden, 6 U.S. 126 (1804).

Further, newly discovered evidence in Petitioners' case indicates there was never probable cause to support charges of abuse against Petitioners. Therefore, the court's authorization of the petition was improper, and jurisdiction never properly attached. Certainly, if Petitioners' newly discovered evidence is as powerful as it was in In re Martin, 423 N.W.2d 327 (Mich. 1988), a fact finder would clearly find that that evidence does not preponderate in favor of continued subject matter jurisdiction and that clear and convincing evidence sufficient to support a termination of parental rights does not exist. The order of adoption then would become void because it was not based on a proper termination of parental rights. In short, if jurisdiction was not properly assumed, then the adoption is void ab initio because the acts and proceedings of a court with improper subject matter jurisdiction are "a mere nullity and void." Fox v. Board of Regents, 134 N.W.2d 146, 148 (Mich. 1965). Injustice should never become final, and denial of a rehearing based on Petitioners' newly discovered medical evidence continues an injustice to both Petitioners and to their children.[15]

In the recent Petition of Doe case in Chicago, in fact, a fit natural father challenged an adoption that had already been finalized. Petition of Doe, 638 N.E.2d 181 (Ill. 1994). The

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[15] As the field of medical science continues to reveal new truths, society and its legal systems will have to become more flexible to allow past injustices to be corrected. See Mays v. Twigg, 543 So.2d 241 (1989): 1993 WL 330624 (Fla.Cir.Ct.)(unpublished)(1993)(DNA testing revealed that Kimberly Mays was "switched at birth" and raised by biologically unrelated parents). Additionally, Petitioners request that this Court take judicial notice of the post mortem exculpation of Dr. Sam Shepherd through the use of DNA technology.

Court of Appeals affirmed the adoption, but the Illinois Supreme Court reversed, and the United States Supreme Court denied certiorari. Where parental rights have not been properly terminated, time alone should not attenuate the rights at issue. Accordingly, the Petition of Doe adoption of several years was unwound because it was founded on fraud and therefore void ab initio. Likewise, in the Baby Jessica case, In re Clausen, the Michigan Supreme Court, relying on its earlier decision in Bowie v. Arder, reaffirmed the primacy of parental rights in Michigan regardless of the time a parent has been separated from his/her child and regardless of an attempted adoption based on parental rights the prospective adoptive family had initially believed were terminated. In re Clausen, 502 N.W.2d 649 (Mich.), stay denied DeBoer by Darrow v. DeBoer, 509 U.S. 1301 (l993), relying on Bowie v. Arder, 490 N.W.2d 568 (Mich. 1992). In fact, the Michigan Supreme Court returned one child to its mother after 8 years of separation. See In re Mathers, 124 N.W.2d 878 (Mich. 1963).

II. THE WRIT SHOULD BE GRANTED TO DETERMINE WHETHER PARENTS OR THEIR CHILDREN ARE DENIED EQUAL PROTECTION WHEN THEY ARE DENIED A REHEARING OR NEW TRIAL BASED ON NEWLY DISCOVERED MEDICAL EVIDENCE DUE TO THE EXISTENCE OF AN ORDER OF ADOPTION BUT SIMILARLY SITUATED PARENTS WHOSE CHILDREN HAVE NOT BEEN ADOPTED AND/OR WHOSE CHILDREN HAVE A DISABILITY WOULD BE GRANTED SUCH A REHEARING OR NEW TRIAL.

A. Protection of Handicapped Persons Under Section 504

of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990

In this case, a rehearing is especially significant to the surviving children because they may have genetic defects that render them disabled under the Rehabilitation Act of 1973 ("Rehabilitation Act") and Title II of the Americans with Disabilities Act of 1990 ("ADA"). Petitioners' newly discovered medical evidence that Samier had osteogenesis imperfecta brings Samier within the protection of both of these statutes. A denial of a rehearing that would prove the children's disabilities is an effective denial of protection and benefits under both the Rehabilitation Act and the ADA.

Section 504 of the Rehabilitation Act requires that "[n]o otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...." 29 § U.S.C. 794(a) (1994). App. AA. The regulations promulgated under § 504 promote program accessibility by barring discrimination in the administration of programs conducted by state and local government, and by requiring that the program or activity operated by a federally funded entity, when viewed in its entirety, be readily accessible to persons with disabilities. 28 C.F.R. §§ 42.520, 42.521(a) (1996), App. BB. Many disabilities are discovered with time and expertise; accordingly, to deny a rehearing to children whose disabilities are newly discovered but who have been adopted is discriminatory and violative of the legislative purposes of the Rehabilitation Act.

In fact, Section 202 of Title II of the Americans with Disabilities Act ("ADA") restates § 504 in its general terms that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C.A. § 12132 (1994). App. CC. The Title II regulation on program accessibility is consistent with the parallel § 504 regulation. See 28 C.F.R. § 35.150(a) (1996) (in part codifying case law interpretations of § 504; see, e.g., Alexander v. Choate, 469 U.S. 287 (1985). App. DD. Not only must each program be accessible as a whole, but covered entities also must give priority to methods of accessibility that provide persons with disabilities the most integrated setting appropriate to obtain the full benefits from the program. 28 C.F.R. §§ 35.150(b), 42.521(b). This standard was drawn from § 504 interpretations that rejected the idea that separate but equal standards were permissible, reasoning that they perpetuate the exclusion of persons with disabilities. H.R. Rep. No. 485, 101 st Cong., 2d Sess., pt. 3, at 50 (1990) reprinted in 1990 U.S.C.C.A.N. 267, 473.

In practice, the differences between § 504 and Title II will be "theoretical or historical". Mark C. Weber, Disability Discrimination by State and Local Government: The Relationship Between Section 504 of the Rehabilitation Act and Title *II* of the Americans with Disabilities Act, 36 Wm. and Mary L. Rev. 1089, 1117 (1995). According to Professor Weber, four factors contribute to the similarity in interpretation of these laws: (1) courts will interpret these laws to achieve uniform results since most cases that involve one statute will involve the other; (2) courts have recognized Choate as expanding the reach of the law in contrast to Southeastern Community College v. Davis, 442 U.S. 397, 406 (1979) (the Court's first interpretation of § 504, which initially narrowed the applicability of the section); (3) Congress stated in Title II's legislative history which interpretations of § 504 it chose to support; and (4) Congress modified § 504 for employment cases to follow the discrimination standards in Title I of the ADA, which Title II regulations adopt for employment cases. Id. As a result of these factors, § 504 should be given a less restrictive reading than the earlier, more restrictive interpretations.

Section 504 applies to the Michigan DSS since it receives federal funding through the Adoption Assistance and Child Welfare Act of 1980 42 U.S.C. §§ 620-628, 670-679(a) (1990) (statute provides for federal funds to states which have child welfare plans meeting specified federal criteria). As recipients of federal funding, the DSS could not legally discriminate on the basis of disability. The ADA also applies to the DSS regardless of whether it receives federal funding and similarly restricts discrimination on the part of the DSS against the disabled.

Dr. Paterson's recent diagnosis of Samier as having temporary brittle bone disease would unequivocally qualify Samier as an individual with a disability under both the Rehabilitation Act and the ADA. A person with a disability is defined under the ADA as having "a physical or mental impairment that substantially limits one or more of the major life activities of such individual...." 42 U.S.C. § 12102(2)(A) (1994), App. EE. In nearly identical language, the Rehabilitation Act defines a disabled person as any person who "has a physical or mental impairment which substantially limits one or more of such person's major life activities...." 29 U.S.C. § 706(8)(B)(I) (1994). App. FF. In cases where a disability is disputed, a hearing should be held. To deny such a hearing to Petitioners and their children is to deny this family the protection of the ADA. Further, it is notable that the ADA does not provide exclusions from protection for adopted children.

Plaintiffs insisted, continuously, since the birth of Samier that the child had cried abnormally when touched and was difficult to feed. Petitioners further noted that Samier would not feed normally, had blue sclera, suffered from anemia, had abnormal leg rotation, had a tendency to fracture inexplicably even in the absence of trauma, and could not walk without corrective shoes. These were all physical impairments that resulted from the presence of temporary brittle bone disease. These physical impairments substantially limited Samier's major life activities and would have continued to do so had he lived. Accordingly, Samier came within the protection of the Rehabilitation Act and the ADA during his life.

Meanwhile, the State had all the information showing that Samier was disabled, whether from brittle bone disease or otherwise. Despite the availability of all of this information, the State did not accommodate Samier's disability through any reasonable investigation, even though Petitioners requested the State to do so. At the insistence of Petitioners, Mohammed Ali and Suehier were given brief, cursory examinations for osteogenesis imperfecta by the State. Suehier, Samier's twin, had mild blue sclera and a small bony protrusion on her left tibia. Although the examination was insufficient to be conclusive, Suehier showed symptoms associated with osteogenesis imperfecta, which is common among twins. Additionally, Zinabe had symptoms of osteogenesis imperfecta that were ignored by the Michigan DSS. See App. Q. Therefore, the State had reason to investigate Samier's disability sua sponte and to determine whether that disability ultimately caused Samier's death instead of Petitioners' alleged abuse but failed to do so.[16]

Samier is not alive today, however, because of his disability. Samier's death was determined post mortem to have been caused by a normally non-life-threatening fall that, because of his brittle bone disease, resulted in fatality. Even a similar fall, such as a toddler's slip in a bathtub with a resulting head injury, can have fatal effects on an individual such as Samier with temporary brittle bone disease or osteogenesis imperfecta.[17]

A federal court has accepted the findings of medical experts in a post-mortem diagnosis. Ashley v. Brown 6 Vct. App. 52 (1993); see also Sheets v. Derwinski, 2 Vet.App. 512 (1992). The court in Ashley permitted an expert to testify regarding his post-mortem diagnosis of a post-traumatic stress disorder which led to decedent's violent death; thus, decedent's widow/murderer was allowed to collect veteran's death benefits. Here, a rehearing on post mortem evidence should be similarly granted to determine if these children come within the protection of the Rehabilitation Act and the ADA. In fact, the first incident of accommodation should be that rehearing.

B. Equal Protection

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[16] Had Samier lived through the tragic accident which led to his death, it is possible that be would continue to meet the definition of an individual with a disability under both the Rehabilitation Act and the ADA. Dr. Paterson concluded that although Samier's brittle bone disease was temporary, he could not rule out the permanent form of osteogenesis imperfecta. App. F, p. 6. Osteogenesis imperfecta substantially limits major life functions by causing the "excessive fragility of bones with increased liability of fracture." Hence, Samier, were he alive today, would be unable to function as robustly as able individuals because of the state of excessive fragility in which his bones would be.

[17] See n.6 supra.

Petitioners argued below that the denial of a hearing that would have been granted to parents whose children were not adopted was a denial of equal protection. This Court held, in Stanley v. Illinois, 405 U.S. 645 (1972), that a father's right to equal protection had been violated by an Illinois statute that denied him a hearing on fitness based on his unwed status. The Court's holding was firmly anchored in the long-standing protection of the natural parent-child relationship and the indivisibility of that relationship. The Court in Stanley found no reason for disparity in rights between an unwed father and a wed father. Likewise, there is no valid reason for denying a rehearing to Petitioners but granting one to parents of other disabled children whose children have not been adopted.[18]

Further, these Petitioners, as immigrant parents of a disabled child, were not similarly situated at the termination hearing with other parents charged with abuse. Charges of abuse generally turn on witness' testimony, circumstantial evidence, and visible signs of abuse. Here, there was no witness to abuse of Samier and no visible signs of abuse. Instead, the "evidence" was x-rays showing broken bones without external signs of abuse and an apparently inexplicable death. Petitioners had no reasonable ability to do battle with a State agency like the DSS that withheld evidence and opposed them at every turn. They had no "explanation" for Samier's special fragility at the time of the hearing although they do now.

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[18] First, there is no essential difference between the parents themselves or their circumstances. Second, this Court has already held that a natural parent child relationship is superior to other relationships where parents are not unfit. See Smith v. Organization of Foster Families, 431 U.S. 816 (1977). Third, there is no legitimate governmental interest in preserving the myth for these children that Petitioners killed their brother; that the children have no family history of osteogenesis imperfecta; and that therefore the children do not come with the coverage of the Rehabilitation Act and/or the ADA.

Neither Petitioners nor their children received any accommodation from the State or the DSS under § 504 of the Rehabilitation Act or Title II of ADA even though brittle bone disease is a disability under those Acts and even though Petitioners requested investigations in 1989 and sought a rehearing after obtaining Samier's medical records in 1994. Now, although the Circuit Court acknowledges that Petitioners have sufficient evidence to warrant a rehearing, that hearing is denied. Neither death nor an adoption, however, should foreclose such a hearing. Further, Petitioners are not similarly situated with other parents who have average language skills, education, and resources and whose children are not disabled. In fact, Petitioners and their children have been subjected to the very discrimination the Rehabilitation Act and the ADA were intended to prohibit and have requested the very sort of accommodation the Acts and the Constitution itself would require.

By granting this Petition, the Court can seize a unique opportunity to extend special rights to the disabled, especially the right to enjoy their natural parent-child relationship.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marian L. Faupel
FAUPEL & ASSOCIATES
Attorney for Petitioners Rehab and Ahmed Amer

APPENDIX A

STATE OF MICHIGAN
Wayne Count Probate Court - Juvenile Division

Hon. Frances Pitts, Presiding

IN THE MATTER OF: FILE NO. 84-241,317

AMER, Mohammed Ali and Suehier
_______________________________________/

ORDER

The Petition for rehearing filed December 4, 1995 is hereby dismissed for the following reasons:

1. This court no longer has jurisdiction in this matter and therefore cannot enter the order requested.

2. It is not timely filed.

3. A party has 21 days in which to file a petition for rehearing and this matter has been filed six years, almost seven years, after the hearing date.

4. The court rule (MCL 5.92) further states that the court may entertain an untimely motion for good cause shown. The language is not mandatory, but discretionary on the part of court. In addition, this court rule (MCL 5.92) did not intend to allow a petition for rehearing to be filed almost seven years after a hearing date.

DEC 05 1995 ______________ S/ ______________
DATE FRANCES PITTS, Presiding

*It should be noted that this matter was appealed to the Court of Appeals. On June 12, 1990 the Court of Appeals affirmed the trial court. The petitioner then made an application for leave to appeal to the Michigan Supreme Court and that application was denied on July 31, 1990.

FILED
DEC 05 1995
S/

(page break)

(AMENDED)

STATE OF MICHIGAN
Wayne Count Probate Court - Juvenile Division

Hon. Frances Pitts, Presiding

IN THE MATTER OF: FILE NO. 84-241,317

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2. It is not timely filed.

3. A party has 21 days in which to file a petition for rehearing and this matter has been filed six years, almost seven years, after the hearing date.

4. The court rule (MCL 5.992) further states that the court may entertain an untimely motion for good cause shown. the language is not mandatory, but discretionary on the part of court. In addition, this court rule (MCL 5.992) did not intend to allow a petition for rehearing to be filed almost seven years after a hearing date.

JAN O4 1996 S/ P24963
DATE FRANCES PITTS, Presiding

*It should be noted that this matter was appealed to the Court of Appeals. On June 12, 1990 the Court of Appeals affirmed the trial court. The petitioner then made an application for leave to appeal to the Michigan Supreme Court and that application was denied on July 31, 1990.

TRUE COPY
S/
Clerk

APPENDIX B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

In the Matter of:	CASE NO. 95-537685 AV HON. AMY P. HATHAWAY
	Lower Case No. 84-241,371 Originally Assigned
MOHAMMED ALI AMER, SUEHIER AMER, and ZINABE AMER,	To: Hon. Martin T. Maher And Hon. Y. Gladys Barsamian; more recently assigned to Hon. Frances Pitts
______________________/	On Appeal to Circuit Court

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JUL 1-1996

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LADA CIVIL DIVISION
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Detroit, MI 48226
(313)964-4111, Ext. 303
________________________/

ORDER AND OPINION

IT IS HEREBY ORDERED, for the reasons stated on the record on June 27, 1996, that this Court AFFIRMED the Wayne County Probate Court's Order denying Appellants' Motion for a Rehearing and/or New Trial

A TRUE COPY	S/ ____________________
TEOLA P. HUNTER	HON. AMY P. HATHAWAY
WAYNE COUNTY CLERK	CIRCUIT COURT JUDGE
BY S/ __________________	
DEPUTY CLERK	

APPENDIX C

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

In the Matter of:

REHAB & AHMED AMER
MOHAMMED ALI AMER,
SUEHIER AMER, and ZINABE AMER

Minors.

File No. 95-537685 AV
Hon. Amy P. Hathaway

-v-

______________________________/

ORAL ARGUMENT

APPEAL OF PROBATE COURT DECISION
on MOTION FOR REHEARING

BEFORE THE HONORABLE AMY P. HATHAWAY, Circuit Judge, Third Judicial Circuit, 9th Floor, City-County Building, Detroit, Michigan -- Thursday, June 27, 1996.

APPEARANCES

For the Petitioner: MARIAN L. FAUPEL (P35666)

For the Department of Social Services:	JUDY A. HARTSFIELD (P34025) Assistant Attorney General
ALSO PRESENT:	WILLIAM E. LADD (30671) Juvenile Defender Office

Reported By: Jeffrey R. Randall (CER3148)

1- (page break)

...what happened, when she was removed. We've included the order. And you can just compare her birth date to the order permitting her to leave the hospital and the medical records showing that she left the hospital prior to that.

Your Honor, I'm just asking you to look at whether or not my clients have gotten due process. Whether they've used reasonable attempts to get this information. And Your Honor, the record is replete with not only the fact that everybody who had anything to do with the O.I. issue treated it as a theory. There was no evidence that was given. And even when professor Sadd became known to them after the rights had been terminated and he took over on the appeal, he knew about Dr. Patterson because of another case, but Dr. Patterson is a scholar. He's a medical doctor. Dr. Patterson would be, basically, he would not be able to testify in good faith as to anything relating to these children unless he had medical records from which to draw the conclusion as to whether or not they had it so they contacted Dr. Patterson. When he came to this country they met with him. Then they made every effort they could to get the records. And once he reviewed the records and Dr. Root then was also going to review them --

THE COURT: The Court had an opportunity to

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read that, counsel.

MS. FAUPEL: And the minute that became known they then had to get an attorney. And Your Honor, I can assure you that when they even came in to see me I felt --

THE COURT: Were you busy?

MS. FAUPEL: Well, Your Honor, I was waiting in my office for somebody to call upon me. They brought in boxes and boxes of things. And I had to go through that and do my own independent due diligent study of this case and the facts and the law. Which I attempted to do and then as soon as I could I filed this petition.

Your Honor, I believe, under the circumstances, my client did everything possible here. This is not a collateral attack on jurisdiction. There is no case law that would bar it. And I would suggest to you, Your Honor, that you are dealing with a case of first impression. And I would ask you to arrive at your decision against the background of the United States Constitution and the substantive due process rights that are at issue here and find that if your reading of the statute and the court rule that is relied upon by fellow counsel here, if you find that bars any review of this case, then I would ask you, respectfully, to find

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that those then are unconstitutional as applied to the facts of this case. Because it would be an abridgement of equal protection to find otherwise. And that you also consider the best interests of these children, which I do not believe were ever considered by Judge Pits in her most recent order. And consider whether or not she abused her discretion if she did consider them and find that it's better to have them live to their dying day with this belief, rather than burden the Department of Social Services, the F.I.A. and/or Mr. Ladd. Because I would suggest that any adult, and we need to project what these people are going to be when they're adults, would welcome this news.

Thank you, Your Honor.

THE COURT: Thank you, counsel.

MS. HARTSFIELD: Your Honor, could I -- counsel's last remark with respect to a request which was not included in her pleadings and that is if the court does find that the probate court was without jurisdiction, that it then go on to find that the probate code is unconstitutional in that it prohibits or would prevent these appellants from being given a forum for a motion for rehearing. I would like to brief the question for the court with respect to the constitutionality of the statute as it applies in this case, your Honor.

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THE COURT: Thank you, counsel. Your request is noted for the record.

The Court is satisfied that the arguments as they relate to the best interest of the children is not the foremost issue presented to this court of appeals, or this appellate level of the probate court's decision to deny the motion for rehearing and/or new trial. I think it's paramount. I think it should have been considered. The Court does believe in the opinions of Judge Maher, Richard Maher, in the in re: Martin case, which thought that the immediate return of the children to natural parents is compelling. Is it compelling when you have, on the other hand seven years of a separation from children who were, unfortunately, or who have, unfortunately, moved on.

What this Court has to decide, and counsel's well advised, is to make a determination whether the probate court abused its discretion as it relates to the motion of a new hearing and/or new trial. This court is concerned about the probate court's determination that the motion for a rehearing and/or new trial was untimely or lacked good cause for the untimeliness. As the appellant counsel indicated on the record, this court is satisfied that the parental rights do override arguments of timeliness.

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There is a problem between the procedural practices of the probate court. There's a state statute that requires a twenty day limit to appeal an issue or request a new hearing or rehearing if parental rights have been terminated and custody of the children have been removed. The statute's very, very clear. On the other hand, we've got a court rule that seems to conflict and says the court will entertain untimely motion for good cause shown. The motion will not be considered unless it presents a matter not previously presented to the court or presented but not previously considered by the court which, if true, would cause the court to reconsider the case.

The Court is satisfied, pursuant to the court rule, that Michigan Court Rule 5.922, or excuse me, 992, overrides the statutory provisions under the rules of construction of the court rules 1.104, which says court rules override statutory provisions if they're in conflict. The problem is do I have jurisdiction.

That's not a rule of practice, it's not a rule of procedure. It's something that I cannot impose on the probate court. It's something that I cannot impose on the legislature.

Let me ask you, counsel, do I have jurisdiction? And I can tell you the way that I look at it is if there was an order of termination of parental

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rights, which I have ample information of through all the pleadings that were supplied to this court, but I have no order of adoption. So are these children still wards of the state? Who's paying for these children?

MS. FAUPEL: Are you asking me to respond?

THE COURT: I am asking you to respond. Let me turn to the appellant first.

MS. FAUPEL: Well, your Honor --

THE COURT: You understand my position about jurisdiction. I can't impose the probate court jurisdiction over children that they don't have jurisdiction over any more.

MS. FAUPEL: Well, your Honor, that, if I may, number one, that kind of begs the question. Because if in fact my clients are able to show in the probate court that this child was never abused or neglected, that court never had jurisdiction. So to say it has to have jurisdiction to find that it doesn't have jurisdiction is a very circuitous argument. And I know they're arguing that unless they're abused and neglected now there's no way to reach back and find that they weren't abused and neglected then, your Honor, this is torturing of the statutes and the court rules and the

Michigan Constitution, in our humble opinion.

You, clearly, have jurisdiction as the

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circuit court to hear an appeal from an order of the probate court. And in deciding whether or not the probate court abused its discretion, you have to do what you just did do and that's to resolve any conflict between the controlling authorities. And I simply asked you to include in your analysis that a consideration of whether or not, you know, on the base of it and the timing there was any thoughtful consideration given to our petition. And we argue that it's clear from the Court's conclusion in 24 hours, without benefit of having Ms. Hartsfield go and track down the order of adoption, which she, you know, six and seven months later, still hasn't provided to anyone, that clearly the probate court did abuse the discretion that it had to take this up with some due diligence itself.

That, furthermore, this court has got to consider the United States Constitution and the other cases which find, when they do find a conflict between procedural issues and substantive due process, feel that the substantive due process have always got to be superior to the procedural due process issues. Your Honor, we believe that clearly you're not doing anything that's impermissible. Because, as I say, we're certainly not enlarging the court's jurisdiction. We're saying that the probate court didn't have jurisdiction ab

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initio. And the only argument that, their strongest argument in their pleadings was always that in re: Hatcher says this is a collateral attack and that's impermissible. And that, your Honor, I argued that Waite was the controlling law at the time. My clients had every expectation at that time to believe that when they did take their timely appeal, which they did, from the order terminating their parental rights, they did perfect that appeal and that they had no reason to suspect that something like this would be barred by anything they did in the underlying proceedings there.

But, basically, your Honor, we've argued today that this is not a collateral attack. This isn't a chance for a rehearing. This is a challenging to the Court's lack of subject matter jurisdiction. And the court retains, as I cited earlier in my arguments in the matter of Waite, that the Court retains jurisdiction to decide whether or not it had jurisdiction. And for that issue it's clear to me that court has jurisdiction to decide its own jurisdictional issues and that you have jurisdiction as an appellate court to consider whether or not the court abused its discretion in concluding that it didn't have that sort of jurisdiction when the case of Waite, and we can certainly brief that, gives it.

THE COURT: All right. Let the record

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reflect that the Court respectfully disagrees with your analogy that the probate court never had proper jurisdiction in the first place. All's we need is an allegation and a petition alleging child abuse to bring the children properly under the jurisdiction of the probate court.

MR. LADD: Your Honor, if I may just simply address the question of the juvenile courts continued jurisdiction. All that I can say is, because they're closed proceedings, that I have talked to the Court and to the adopting parents and to the agency who have all reported to me that the children have both been adopted and that there's been a final order of adoption.

Similarly, there has been, and, again, I have not looked at the court file in a long time, and order of dismissal or wardship by the juvenile court. And I don't know the date of that order. But again, it was well before the time that appellants filed their motion.

THE COURT: I think that all fits in your argument that there's no jurisdiction. And I don't know why the Court has not seen any evidence of that at this time.

The Court is going to make its ruling. Did you want something for the record?

MS. HARTSFIELD: Your Honor, as the court

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knows, appellants are responsible in any appeal for assuring that the lower court's records and pleadings are provided to the appellate court. That's the first issue. Therefore, the appellants should have requested that the lower court's file of these children be transmitted to this court. In that file, your Honor, is the order terminating the wardship of these kids due to an adoption. We can easily ascertain that, your Honor.

I can again assert to the court that my clients, the Department of Social Services, can supply to the court affidavits from the workers that handled the adoption of these children and were present when the adoption orders were entered.

Is the Court desirous of receiving that information?

THE COURT: Well, I think that's pivotal.

MS. HARTSFIELD: Okay.

THE COURT: And based on your statement right now that it is the burden of the appellants to establish that there was discretion on the part of the probate court and they argue that, one, the probate court did have jurisdiction and, two, that the issue of timeliness is not a valid reason to deny their motion for rehearing, based on what they've presented and based on the response that I've received, the Court is satisfied

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that the probate court did have jurisdiction because I have no evidence to refute that.

MS. HARTSFIELD: Oh, Judge.

THE COURT: You just said that it was their burden. The Court is going to deny the hearing if you provide within 24 hours some evidence that these children have been adopted. The Court is satisfied that any order of adoption and termination of the state's interest in these children denies the probate court any jurisdiction over this court, over this issue of a rehearing and new trial.

The Court is very well aware of what may or may not be in the best interest of the children. The Court is very well aware of the fact that these children are possibly being led down a path that their parents abused them. And the Court is not satisfied, this Court is not satisfied if, in fact, that is the case. The Court believes there has been sufficient evidence to go back for a new trial on the issue of whether there was a abuse or whether there was brittle bone disease. However, I cannot impose jurisdiction on the probate court. I have no authority for that. That's legislative. I am only here to comply with the laws of the State, not create new ones. And I can hear your argument as it relates to declaring this probate

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provision requiring jurisdiction to be unconstitutional at this point because the children have been adopted, but the Court is not satisfied that I can do that, nor will I do that, because I am not satisfied that is in the best interest of the children. It's been seven years. We have to think of the children.

But I am not here to make that decision. I am only here to decide if the probate court abused its discretion. The Court is satisfied, if the children have been adopted as represented by counsel, that Judge Pitts knew that, then the Court is satisfied that there was no abuse of discretion and the Court will deny your appeal.

Twenty-four hours, counsel.

MS. HARTSFIELD: Your Honor, could I ask the Court, I may need 72 hours, your Honor. I don't think 72 hours in light of seven years in unreasonable, Judge, for me to supply to the Court the information.

THE COURT: It should be in your file, counsel.

MS. HARTSFIELD: No. Judge, may I say this to the Court? My office does not handle adoptions of children, okay?

The A.G.'s office is not involved at that level of the proceedings. We only handle the proceedings through the termination of parental rights. The agency is not represented by any counsel in adoption

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proceedings.

THE COURT: Seems to me, and the Court's not putting its hand on it --

MS. FAUPEL: Your Honor, is the Court also ordering then Miss Hartsfield, if she does find this in 24 hours to provide me with an unredacted copy of what she provides to the Court? Because we have concerns because we carried our burden in our pleading of showing Blue Cross bills in 1994 that were going to my client. And we have other information that makes us believe that there are other irregularities in this case. And if they are going to ask for an opportunity to somehow or other provide you with something I don't get, then I object.

MR. LADD: Well, I guess that's a real problem.

MS. HARTSFIELD: That's right.

MR. LADD: Because essentially the essence of this is the confidentiality of the adoption records, which are not provided, as a matter of course, to the juvenile court in the juvenile court file, but are rather kept as a matter of law in separate files.

MS. HARTSFIELD: In our closed files, your Honor.

MR. LADD: Now, counsel, is essentially asking to violate the confidentiality of those orders.

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If the Court wishes to be provided with copies of those by order, I think that's reasonable on the part of the Court. But to allow anyone to have access to those orders, in particular unredacted ones that state the person that adopted these children is completely without legal basis and it would violate these children's and the adoptive parents' rights of confidentiality.

MS. FAUPEL: Your Honor, that's why it took us ten years to get the medical records. Because this is exactly what happened to them during the whole course of the proceedings.

THE COURT: Okay, thank you, very much.

The Court is satisfied that in fact the order of adoption should be dedacted eliminate the names of the adopting parents and any information that would disclose who the adopting parents are. But the Court just wants to make the record clear, pursuant to MCLA 710.5(A), "an order of adoption shall be furnished by the court to the department or agency who has control over these children." That was you. The Court is satisfied that was you. It should be in your file.

MS. HARTSFIELD: Judge, let me say this. The Department of Social Services contracted with a private agency to do the adoption of these children. It was the agency, the Court has got copies of their

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reports, that was handling the whole case, and that was Judson

Center, I believe. Judson Center's records, it may take me more than 24 hours to get out of their records, is what I'm telling the Court, a copy of it.

Also, Wayne County didn't do the finalization. Another county probate court did the finalization of the children's adoption.

THE COURT: I cannot believe that there's not an order over by the probate court regarding an order of adoption.

MS. HARTSFIELD: I'm telling the Court that Wayne County may not have the copy of the order of adoption because Wayne County didn't do the final order of adoption. The children were placed by that time in another county. And that county court would have done the final order of adoption. What I'm saying to the court is it may take me more than 24 hours to get it, but I can get, your Honor. And I don't want, if I can't get it in 24 hours, for the Court then to conclude that these children have never been adopted. I'm asking for --

THE COURT: Mr. Ladd, why don't you work with your co-counsel there. Possible there's an order of adoption fairly close to the children.

MR. LADD: Does the Court need anything else other than that order, your Honor?

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MS. FAUPEL: If I may, your Honor, I'd like to know how Judge Pitts then was supposed to take judicial notice of this order that now Miss Hartsfield tells you and me is in another county, not in fact in her court records, after she just tried to convince you that all she had to was --

MS. HARTSFIELD: Your Honor... and information and reports that the court has in its juvenile court file that would indicate that the children had been adopted. You know, there are post termination review hearings that had to be held pursuant to the juvenile code to give progress reports with respect to the adoption of those children. That would be in the juvenile court file. And the court's own order terminating its jurisdiction is also in the court file.

I can get the probate court's order terminating the jurisdiction. I'm saying to the Court it's my belief that the order of adoption was done by another county probate court.

MS. FAUPEL: I would just argue then, on top of everything else, which is, frankly, emblematic of how it went for my clients for five years and why we're here ten years later. I would respectfully suggest then, your Honor, that we got a big problem. Because we've got different dates cited for the adoption, different years.

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now we're being told, you know, at this point in time that, in fact, Judge Pitts didn't have any way of taking judicial notice of that, which I think supports our argument that it was a complete abuse of discretion; because in 24 hours she couldn't have even found out whether she had a paper telling her that or not and, if not, getting it. It's clear that she looked at the two big books and 24 hours later on a one-page opinion decided not to deal with it.

THE COURT: Thank you, counsel.

MR. LADD: For the record, does this court have -- has the juvenile court file been transmitted to this court?

THE COURT: We have the file from the probate court. And we've been through it and we see nothing in there as it relates to termination of jurisdiction. You had more information attached to your appendix than the entire file.

MR. LADD: Your Honor, I believe then this Court may not have the whole file.

THE COURT: Why don't we get the file over here for me. I don't know why --

MS. HARTSFIELD: Can I see what the Court has?

THE COURT: Sure. This hearing is

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concluded at this time.

MR. LADD: Thank you Judge.

THE COURT: Ma'am?

MS. FAUPEL: I just would like to express my concern if Mr. Ladd and Miss Hartsfield are somehow or other going to be able to pull some strings that I can't, that at least as a matter of due process I have the opportunity in this court to see everything they provide to this court. And I'm really concerned here at this point that now we've gone from one piece of paper that I think they could have provided earlier than today, to, apparently, a whole file of materials that they now want me never to see and never be able to confront.

THE COURT: The Court will assure you that anything the Court looks at you will look at.

MS. FAUPEL: Thank you, your Honor. The Court does not want to see the names of the adopting parents and/or any indication as to who they are, their addresses or any of the like. I want that dedacted on what the Court sees. The Court wants to see as minimal as possible, not because the Court's lazy, but because I think that's in the best interest of the children. I just need to know that your arguments that this court had, or the probate court had no jurisdiction over the rehearing in the matter that was presented by the

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appellants is, in fact, true. And I had no evidence to that effect.

MR. LADD: Your Honor, for the record, would the Court accept the juvenile court's order of dismissal of wardship?

THE COURT: Anything that shows that there is no further jurisdiction over this kid. There was nothing in the record. The last thing that's in the record, according to the records I looked at, was an order of termination of parental rights. That's all that anyone provided me with for the purposes of this argument.

MR. LADD: Procedurally, your Honor, does the court wish to have any further proceedings?

THE COURT: I have a fax number. When you get something, you want the Court to look at it, do a proof of service to all the parties.

Thank you.

(At about 12:41 p.m., proceedings concluded)

APPENDIX D

Court of Appeals, State of Michigan

ORDER

In re Amer Minors	Richard Allen Griffin Presiding Judge
Docket # 197716 L.C.# 95-537685-AV	Mark J. Cavanagh Michael R. Smolenski

________________________________ Judges

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

STATE OF MICHIGAN COURT OF APPEALS (seal)
A true copy entered and certified by Ella Williams, Chief Clerk, on

JAN 23 1997	S/
Date	Chief Clerk

APPENDIX E

Order

Michigan Supreme Court
Lansing, Michigan

Entered: May 30, 1997

108620

Conrad L. Mallett, Jr.
Chief Justice

James H. Brickley
Michael F. Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Elizabeth A. Weaver
Marilyn Kelly
Justices

IN RE MOHAMMED ALI AMER, SUEHIER AMER AND ZINABE AMER, Minors,

---

AHMED and REHAB AMER,

Appellants.

SC: 108620
COA: 197716
LC: Circuit Court
No. 95-537685-AV
Probate Court
No. 84-241317

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

90527

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court

May 30 , 1997 S/

Clerk

SEAL OF THE MICHIGAN SUPREME COURT. LANSING.

APPENDIX F

University
Of Dundee
BIOCHEMICAL MEDICINE

From: Dr C R Paterson,
MA, DM Msc, FRCP, FRCPath
Senior Lecturer and honorary consultant

13th December 1994

Samier Amer (born 18th November 1983)

I have been asked to prepare a report on this child's injuries. I have been supplied with:

Medical records from Oakwood Hospital relating to November 1983, March 1984 and November 1985
Medical records from Botsford General Hospital relating to 20th January 1984 (the records relating to the investigations carried out later were not available)
Medical records from Associated Physicians, Woodhaven from February 1984 to July 1984
Medical records from the Children's Hospital of Michigan for November 1985
Medical records from Tri-County Orthopedic Group for January 1984 to July 1985
Letter from Dr Sheldon Schore dated 4th April 1984
Autopsy report
X-rays from Farmington Orthopedic: one film dated 30th Jan 1984, two films dated 25th Sept 1984 and one undated unnamed film

X-rays from Oakwood Hospital: seven films dated 13th Mar 1984, three films dated 14th Mar 1984, five films dated 22nd Mar 1984 and two films dated 21st November 1985

X-rays from the Children's Hospital: one film dated 21st Nov 1985 and six films dated 22nd Nov 1985 (the skull films were missing)

History

Samier was born by Caesarian section at term and was one of twins. The twins were seen on three occasions in December and January by Dr. Schore. On each Mrs. Amer expressed her concern that Samier cried when picked up or even touched. Samier was brought back to Dr Schore on 20th January 1984 because of fever and limpness of the right arm noted for the first time that morning. At Mr Amer's insistence he was seen at Botsford General Hospital where a radiograph showed an impacted fracture at the upper end of the right humerus together with a fracture of the mid-shaft of the left clavicle. Samier was next seen by Dr Schore on 26th January. A further radiograph was taken when Samier was seen for orthopedic follow-up on 30th January. Meanwhile at Botsford Hospital Samier was found to be anemic and to have a low gamma globulin level in the blood. He was provided with iron supplements by mouth and gamma globulin injections which were administered weekly at Dr Schore's office on 6th, 13th and 20th February. During February Mrs Amer continued to express her concern to Dr Schore about Samier's feeding difficulties. Mrs Amer asked for Samier to be assessed by a pediatrician at Oakwood Hospital.

Samier was seen and examined at Associated Physicians on 27th February when the feeding problem was again mentioned. He was seen again on 6th March. On 12th March he was admitted to Oakwood Hospital after the parents had telephoned the doctor because of Samier's wheeze and cough and their continuing worry about his poor feeding. On examination in Oakwood Hospital superficial bite marks were noted but there was no bruising anywhere and the general examination was normal. However, on investigation further fractures were found (see below). At the same time the feeding difficulty was confirmed in hospital, where he initially lost weight.

It was considered that the fractures must have been caused by child abuse and Samier was discharged into protective custody but with rehabilitation so that he was returned full time in October 1985. On 21st November 1985 Samier was in the bath when Mrs Amer left to answer the phone. She heard a bang, rushed back and found Samier lying on his back in the bath in shallow water. She gave him mouth-to-mouth resuscitation and he revived momentarily. He was transferred urgently to Oakwood Hospital by ambulance. Resuscitation was also provided in the ambulance when he was found not to be breathing. On arrival at hospital there was no spontaneous breathing or pulse, the pupils were fixed and dilated. It was considered that irreversible brain damage had taken place and ventilation was discontinued the following day.

At autopsy Samier was found to have contusion over the occipital part of the head and a stellate fracture of the occipital bone. There was contusion of the cerebellum with bleeding nearby, some damage to the tip of the occipital lobe of the cerebral cortex and contusion of the inferior surface of both frontal lobes of the brain. Minimal subdural bleeding was found covering both frontal lobes. At this stage, apart from a small bruise on the left cheek, there were no bruises elsewhere.

Radiographs

Some films mentioned in the medical records appear to be missing from the collection with which I was provided. Most importantly these are the films taken on 20th January 1984 at Botsford Hospital of both shoulders and humeri and the film (s) of the skull taken at 3:15 pm on 22nd November 1985 at the Children's Hospital. My report may need modification once these missing films become available. On the films available to me I report as follows:

30th January 1984 The one definite film of this date shows periosteal elevation along both sides of the upper part of the shaft of the right humerus. This is consistent with there having been an earlier fracture through the upper end of the humerus. The fracture would have taken place between seven and 14 days earlier. Greater precision in dating this fracture is not possible without seeing the earlier film taken at Botsford Hospital on 20th January. The undated film, probably from 30th January, shows similar appearances of the upper humerus but no additional abnormalities elsewhere. The quality, however, is poor.

13th March 1984 These films from Botsford Hospital include postero-anterior and lateral views of the chest. These chest films show no abnormality of the heart and lungs. There is considerable thickening of the upper end of the right humerus consistent with the known previous fracture. In the mid-shaft of the left clavicle there is evidence of a healed fracture but an additional fracture line is visible. The appearances are most compatible with there having been a previous healed fracture with a re-fracture within the preceding two or three weeks Barium studies of the upper gastrointestinal tract were reported as showing normal appearances.

14th March 1984 The right humerus shows no change in its appearance. The shaft of the right humerus is seen for the first time since 30th January and a well healed periosteal reaction is seen continuing down the shaft. The left femur shows a periosteal reaction on the medial side of the middle of the shaft. The appearances imply that this is more than seven days old but probably less than about three weeks. The lower end of the left femur shows a minute spur but no fracture. The upper left tibia show a transverse fracture through the metaphysis. There is no convincing periosteal reaction. This fracture could be fresh but may be up to about ten days old. One lateral view of the skull shows no abnormality.

22nd March 1984 Five views of the skull show no abnormality. X-rays of both humeri show no significant abnormality. In particular the fracture of the upper right humerus seen in January and March 1984 has now remodelled completely.

21st November 1985 In all there are three chest films. These show no bony abnormality.

22nd November 1985 (post-mortem films) Views of the chest and all limbs show no bony abnormality.

Comments

There appear to be two main issues in this case. Firstly, were the fractures seen in 1984 the results of accidental injury, non-accidental injury or bone disease? Secondly, was Samier's fatal injury in November 1985 accidental or non-accidental?

I understand that there were the following fractures:

1. Fracture upper end of the right humerus, first seen at

Botsford Hospital on 20th January 1984. This was seen again on 30th January and on 13th and 14th March with steady progression of the healing.

2. Fracture mid-shaft left clavicle, first seen at Botsford Hospital on 20th January 1984. This area was not seen on the X-rays taken on 30th January but a fracture at this site was seen on 13th March. The appearances at that stage suggested an old fracture with a re-fracture in the same site, the re-fracture probably having occurred in early March.

3. Fracture of upper left tibia first seen on 14th March 1984. This appeared to be fresh at the time and in my view would have occurred in the preceding ten days.

4. No fracture was seen but some periosteal reaction was noted on the shaft of the left femur on 14th March 1984. this appearance could possibly represent an earlier undisplaced fracture but there was no evidence of any discontinuity in the bone.

I would like to point out some features of these fractures. The fracture of the upper humerus was a substantial, full thickness fracture and, judging by the amount of periosteal reaction seen subsequently, would have represented substantial trauma had the bones been normal. However, when Samier was examined on 20th January both by Dr Schore and in the emergency room at Botsford General Hospital, no superficial evidence of trauma was seen. The nature of this fracture is such that it is almost inconceivable that it could have occurred to normal bone without there having been obvious superficial evidence of the causative injury.

Similar considerations apply to the fracture (s) of the clavicle. The clavicle is a superficial bone and a transverse fracture such as is seen here would represent local trauma. Without the original films one cannot be sure when the fracture initially took place, but it should be noted that Samier was seen very frequently by a number of professional people during the periods in question.

Similar considerations apply to the fracture of the upper tibia which is not the sort of metaphyseal fracture traditionally associated with non-accidental injury. This is a full thickness fracture through the metaphysis and, since the tibia is a very superficial bone, would have represented very significant local trauma had the bone been normal. However, when examined at Oakwood Hospital on 13th March there was no clinical evidence of this fracture which was only noted radiologically. It should be noted that during the whole period when this fracture might have occurred, Samier was seen at least weekly by professionals. No superficial evidence for this fracture was reported.

One cannot tell whether the periosteal reaction of the left femur represented a small fracture. In any event, the appearances of the periosteal reaction are of an injury within the preceding two weeks and if it were a fracture, similar considerations would apply as with the tibial fracture.

While one cannot be certain whether there were three, four or five fractures here, each fracture shows significant discrepancy between the radiological findings and the reported evidence of injury. This discrepancy is the hallmark of all forms of brittle bone disease. In a child regularly observed by professional colleagues throughout the period in question, the suggestion that these fracture could have been caused by non-accidental injury must be untenable. In general, in genuine non-accidental injury, bruises greatly outnumber fractures. In this case the opposite is true and, even if there were other pointers, one would have to suspect some for of brittle bone disease.

There are two main type of bone disease that cause fractures at this age. One is osteogenesis imperfecta, an inborn abnormality of the collagen, the fibrous framework of bone important for its strength. The second is a disorder, the nature of which has only become clear in the last ten years, partly as a result of our own research here. It is now evident that there is a form of temporary brittle bone disease distinct from osteogenesis imperfecta and which causes fractures limited to the first year of life and, to a large extent, the first six months of life. The disorder improves spontaneously and appears to be cause by temporary defects in collagen maturation.

Points in favour of the second diagnosis include Samier's reported difficulty in feeding in early life, the fact that he cried when picked up from the time of birth, the reported anemia when first investigated and the minute spur seen on one view of one femur. It should be noted that, in our experience, twin birth appears to be an important risk factor for this condition. The reason for this is still not clear. However, even though there were no recognised fractures subsequent to March 1984, ordinary osteogenesis imperfecta cannot be entirely excluded.

I would like now to consider the fatal injury sustained by Samier on 21st November 1985. Over the years the account given by the parents of this has been consistent. I understand that it has been said that the injuries found radiologically and at autopsy could not have reflected a fall from a modest height. However, all the abnormalities found at autopsy were consistent with an impact at the back of the head leading to fractures of the occipital bone and damage principally to the underlying cerebellum. It should be noted that the cerebellum shares with the brain stem a small partially separated compartment at the back of the skull known as the posterior fossa. Damage in this area can lead, sometimes with a lucid interval, to the cessation of respiration since the respiratory centre is sited in the brain stem. Mrs Amer's account of the events would be entirely consistent with a posterior fossa injury. My understanding of the autopsy report is that the other abnormalities found reflected other effects of the same injury, but did not contribute to Samier's death.

It is important to recognise that retinal hemorrhage has a wide variety of causes including single impact and increased intracranial pressure of any cause. This finding does not reflect additional injury.

It is sometimes suggested that the height of a fall required to cause skull fractures and /or fatal intracranial trauma is very substantial. This view is quite wrong. For example, in large studies of children in the USA with playground accidents (in which non-accidental injury can probably be excluded) there was a clear relationship between the severity of injury and the nature of the surface onto which the fall took place. Indeed, firm surfaces such as concrete could be associated with fatal injury when falls were from a height of as little as two feet. It is entirely conceivable, therefore, that a fall by a child capering in the bath, hitting the back of his head on the rim of the bath, could cause the problems that occurred here.

Conclusions

The evidence I have reviewed points to the fact that bone disease is much more likely than non-accidental injury as a cause of Samier's fractures in 1984. The head injury in 1985 is likely to have occurred in a fall in the bath.

Background

I have been concerned with research and patient care in the field of bone disease since 1964 and specifically with the brittle bone diseases of childhood since 1971. I am the author of two textbooks on bone disease and over 100 articles in medical and scientific journals. Of these over 30 relate to the brittle bone diseases of childhood.

Our clinical research is based on records of over 1000 patients with osteogenesis imperfecta, most of whom have been seen personally, and on sets of radiographs from some 150 patients. I have been an invited visiting specialist in this field in Finland, Germany, New Zealand and the United States. I would be glad on request to give further details of my qualifications and experience.

S/
Colin R. Paterson

APPENDIX G

DR. NEWMAN M. KOPALD AND
DR. SHELDON A. SCHORE
OSTEOPATHIC PHYSICIANS AND SURGEONS
20824 WEST WARREN AVENUE
DETROIT, MICHIGAN 48228

April 4, 1984

Provizer, Eisenberg, Lichtenstein & Pearlman, P.C.
4000 Town Center, Suite 1240
Southfield, Michigan 48075

RE: Samier Amer, Minor.
PARENTS: Rehab and Ahmed Amer

ATTN: Gary Eisenberg
Dear Mr. Eisenberg:

Mr. and Mrs. Amer presented themselves in my office for the first time with their twins Samier and Suehier, on December 15, 1983. The twins were apparently delivered without complications at Oakwood Hospital, Dearborn, Michigan, on November 18, 1983. I requested but have not received their hospital records to date.

Samier was reexamined in my office at one and two months of age, and was found to be making normal progress with no evidence of complications or abuse. On January 20, 1984, he was brought to my office with a slightly elevated temperature of 100 degrees rectally, and his mother noticed that his right arm was limp. She stated that she noticed this for the first time that morning. Examination of the infant revealed the right upper arm to be mildly flaccid on flexion and extension, with a cracking sound of the shoulder joint. I informed the parents that the child should be examined immediately by an orthopedic surgeon to rule out any fracture, dislocation or separation of the right shoulder joint. They were referred to Robert Mandell, D.O., of Botsford General Hospital, Farmington Hills, Mi., who examined the infant in the Emergency Room. The child was noted to have and impacted fracture of the right shoulder. The shoulder was immobilized and treatment was started.

The infant was seen on follow-up by Dr. Mandell, and did not return to my office until January 26, 1984. The parents denied any acts of abuse or history of trauma to the infant, and could not justify why the youngster sustained a shoulder fracture.

Mrs Amer repeatedly commented to me that Samier was difficult to feed, lazy, sucked his thumb frequently, and had to be force fed cereals or milk. A blood test taken at Botsford Hospital on January 30, 1984, indicated the presence of mild anemia and hypogammaglobulinemia. She was instructed to bring the infant to my office for weekly gamma globulin injections, and the infant was placed on oral iron supplement.

Samier was examined at my office on February 6th, 13th and 20th, and was given gamma globulin. Mrs. Amer continued to complain of the child's difficult feeding problem. I suggested to her that the infant be hospitalized to determine the cause of his behavior. He was gaining weight and there was no evidence of any child abuse or notable fractures to date. Mrs. Amer stated that she wanted to take the infant to Oakwood Hospital to be evaluated by a pediatric specialist. I did not dispute her suggestion and offered to release any records I had on Samier to the specialist, with her consent.

I have had no contact with Samier since February 20, 1984. Mrs. Amer called me at my office on March 6, 1984, to inform me their infant had been hospitalized at Oakwood Hospital. I requested that she have the specialist send me a report on the infants findings and progress. However, I have received no information to date.

Hoping that this resume will assist you with the information you requested, I remain

Yours very truly,

S/

Sheldon A. Schore, D.O.

SAS/ef

APPENDIX H

OAKWOOD HOSPITAL
MEDICAL RECORDS

PATIENT NAME:AMER, SAMIER HOSPITAL NO:670538
ROOM NO: ADM DATE:3-12-84 RLS DATE:3-27-84

FINAL DIAGNOSIS	1. Possible child abuse. 2. Feeding problem.
PROCEDURES/OPERATIONS:	None.
COMPLICATIONS:	None.
CONSULTATIONS:	Dr. A. Suarez. Dr. N. Rotter

PERTINENT FINDINGS: Chief Complaint- Trouble feeding. Present Illness- Amer Samier is a full term twin male born by repeat Cesarean section with a birth weight of 6 lbs. 11 ozs. and good Apgar scores. His female twin had a birth weight of 7 lbs. 14 ozs. with good Apgar scores as well. The delivery was non traumatic at Oakwood Hospital. Since birth, the mother has said that she has had extreme difficulty feeding Samier in contrast to his twin sister Suheir. This feeding difficulty resulted in multiple formula changes starting with Similac with iron and going to SMA formula and then ProSobee and then Nutramigen was suggested but his mother was unable to obtain that formula prior to his admission. The mother reports that during the few days prior to admission the patient had received bites from his

18 month old brother. It is significant that both he and his sister were hospitalized at another hospital, Botsford General Hospital, one month prior to admission for "blood infection" and according to Mrs. Amer they were treated with intravenous at the time.

Physical examination revealed a comfortable male infant in no obvious distress and positive findings of physical examination were: superficial bites on both soles of his feet and also on the left torso and also in the interscapular region. None of the areas were erythematous, but appeared to be superficial scraping of the skin. Physical examination was otherwise not remarkable.

Lab and X-Ray Findings: His hemagram revealed WBC 12,300, Hg. 12.0, normal differential. Serum chemistries were: sodium 144, potassium 6.2, chloride 111, CO2 19, BUN 6, glucose 101. Creatinine 0.5. Stool was sent for occult blood and it did show no red blood cells, no white blood cells, but it was positive for increased stool fat. CO2 content was 22. A stool Rotozyme was obtained and was positive and a urine culture was not remarkable for significant infection. His serum calcium was 10.6, serum potassium 5.8, repeat serum calcium was 10.8 with a serum phosphorus of 6.6. He had a metabolic screen performed which showed slight generalized aminoaciduria and a suspicious Kocopolysaccaride test which result did not come until after his discharge and will be followed up in the office. His chest x-ray was normal and upper gastrointestinal series was normal. A bone survey was obtained due to the presence of human bite marks on the suspicion of possible child abuse and revealed the following: healing fractures of the right humerus left proximal tibia and it states "we also suspect periosteal new bone along the medial aspect of the left femur." Skull x-ray was entirely normal.

Consultant's Findings: The patient was seen by Dr. Suarez, orthopedic surgeon, his impression was evidence of multiple different age bone injuries to the right humerus, left upper tibia, distal and middle left femur and left clavicle, likely child abuse. Recommendations were in what regards to fractures, "the patient appears to have no pain even on pressure, no deformity, good stability and I would recommend no specific treatment for the fractures right now. We are concerned and should insure protecting this child from possible further abuse."

Medical Surgical Treatment: The patient was initially started on Metramigen formula in view of possible combined milk and soybean intolerance. He tolerated this formula without difficulty and then was subsequently changed to Isomil formula which is soybean based and he did very well on that as well. For the first nine days of his hospitalization he only gained two ounces, but thereafter he gained weight rapidly which ruled out any organic cause for his poor feeding and failure to thrive. After the first nine days of hospitalization he also became a very good feeder. During his hospitalization every effort was made to rule out organic causes for his poor feeding and poor weight gain in relationship to his twin. A pneumogram was obtained which was within normal limits and was obtained to rule out any type of muscle disorder. His calcium and phosphorus levels were all within normal limits which ruled out organic bone disease leading to these bone injuries.

He was seen in consultation by Dr. Potter and although he felt he had increased muscle tone, the rest of his examination was normal and the injuries resulted most probably from child abuse.

CONDITION ON DISCHARGE: On discharge the patient was alert, active, feeding well, gaining weight rapidly and was in no distress.

DISPOSITION: A CD 3200 form of suspected child abuse was filed during his admission and the patient was released into custody of Protective Services after we were sure that he was gaining weight rapidly and there was no organic cause for his failure to thrive.

DISCHARGE INSTRUCTIONS: Medications- none.
Diet- Isomil formula.
Activity for age.
Follow up- The patient was to be brought to the pediatrician's office one week after discharge.

CJ
cc: C. Johnson/Potter/Suarez/Insurance

C. Johnson, M.D.
S/
SIGNATURE OF ATTENDING PHYSICIAN

DATE DICTATED:4-12-84 DATE TYPED: 4-20-84
TYPED BY:CCM DATE OF EVENT:
TYPE OF REPORT:

PGS 1&2 OF DISCHARGE SUMMARY

APPENDIX I

REPORT AND RECOMMENDATION OF REFEREE

STATE OF MICHIGAN
IN PROBATE COURT FOR THE COUNTY OF WAYNE
JUVENILE DIVISION

REPORT AND RECOMMENDATION OF REFEREE

In the Matter of AMER: Samier No 241, 317

A child(ren) alleged to come within the Provisions of Act 54, Extra Session of 1944 as amended

I, the undersigned a duly appointed Probation Officer of this Court, acting as referee in accordance with the Provisions of Act 54, Extra Session of 1944 as amended, of the State of Michigan, hereby certify and report that I have this day taken the testimony of the witnesses and statements of the parties in interest in the above matter, and no objection was made by the parties in interest to the taking of such testimony and statements; that the testimony and statements so taken show that: Child(ren) is (are) under the age of nineteen years.

Samier, born 11-18-83

The matter is before the Court today, September 4, 1984, for continued adjudication on a Petition filed April 2, 1984 by Steven rose of the Wayne County Department of Social Services.

Present in Court today are: Prosecutor Pat Battersby, for the Department; Steven Rose, petitioner: Cynthia Falkenstein for the baby; retained attorney, Gary Eisenberg, for the mother and father, Rehab and Ahmed Amer. Both parents are present, as well as Ellen Rumman, Tula Michalakis and Mary Lane, all three of the International Institute and Betty Glover of the Court's Family Treatment Unit.

The Court conducted a Pre-trial April 16, 1984. The matter was continued at the request of counsel for further Pre-trial May 10, 1984. On May 10, 1984 the Court received four exhibits that were joint exhibits of the Department, child and parents, being Exhibit (number illegible) a letter from Dr. Sheldon A. Schore, D.O. to Gary Eisenberg, dated April 4, 1984, Exhibit #2, the medical records of Samier Amer from Dr. Sheldon Schore, Exhibit #3, an Affidavit signed by Wafaa Bazzi, May 7, 1984 and Exhibit #4, being the medical records of Samier Amer from Oakwood Hospital, dated April 24, 1984.

The Court took sworn testimony June 12th from Paula Fisher, Public Health Nurse; partial testimony from petitioner, Steven Rose, from Dr. Carolyn Johnson and from Dr. Sheldon Schore. The Court heard sworn testimony July 31st from Dr. David Osher and from Dr. A. Suarez and completed testimony from Steven Rose. The Court also received, with limitation, the medical x-rays of the child, Samier. The Court heard partial sworn testimony from the mother, Rehab Amer. The Court, today, heard sworn testimony from the mother and from Ellen Rumman. The Court also heard dispositional testimony from Dr. R Day of the Clinic for Child Study.

Based on the testimony in the record as a whole, the Court makes the following finding of fact for the purposes of adjudication and partial disposition:

FINDINGS OF FACT

(1). Samier Amer was born November 18, 1983 at Oakwood Hospital. He is a resident of Wayne County, residing with his parents, Ahmed and Rehab Amer, at the time of Court intervention.

(2). He has a twin sister, Suehier. He has an older brother, Mohammed Amer, born 12-11-82.

(3). The child was detained at Oakwood Hospital as a result of a 3200 filed by (over)

I hereby certify that said child(ren) and ______________ have been duly informed of the foregoing report and recommendation to the Court.

Examined and approved:

S/Referee H. Gail McKnight/v
S/Judge of Probate
September 4, 1984
Date of Hearing
Date Dictated: 9-10-84
Date Transcribed: 9-12-84

(5). Based on the testimony of Steven Rose, the Court concludes that the Department became involved as a result of a referral from Oakwood Hospital. The child had bite marks on the left side of his torso, the back of his neck and the bottom of his feet. The Department of Social Services filed a Petition due to the unexplained fractures and bites. The Department never did investigate the identified babysitter of Wafaa Bazzi nor the father alone, nor others in potential contact with the child. The

Department has monitored the siblings in the home and has monitored the child in the care of the relatives, Mr. and Mrs. Ayache, also of Dearborn. Department investigation shows the family to be residing in a fine, clean, suitable home and shows the family to be close knit, with bonding and no evidence of marital discord.

(6). Based on the testimony of Dr. Carolyn Johnson, who is qualified as an expert in Pediatrics by her educational experience, the Court finds that Samier is a much different child than his siblings. The doctor initially assumed the child had a milk allergy and, therefore, changed the child's formulas. The doctor did arrange for the child to be admitted to Oakwood as a result of the mother's continued complaints regarding the child's feeding problems. The doctor observed that the child had a fracture in the left femur, the left tibia and the right humerus. The doctor conducted a number of tests to rule out bone problems. There is no medical reason for the child to have a large number of fractures. The doctor found the child to be a very stiff baby who is hard to manipulate. This trait is called being hypotonic. A normal baby is more floppy, like jello.

The doctor, based on her observations and testing, concluded that there was needed a substantial height or quite an acceleration motion in order to break the bone as the child is a very small mass. The doctor, based on her experience, found that a child of his age would scream when touched as a result of these injuries and there would be swelling for several days that would be observable to others about the child. The doctor found the child to be very attentive to his mother and the child definitely preferred his mother to any other person.

(7). Based on the testimony of Dr. Sheldon Schore, who was qualified as a result of his practice as a D.O. since 1966, the

Court finds that the family had regular contact with Dr. Schore from December 5, 1983 through February, 1984. The child was brought in for treatment on a regular basis. The family did bring to his attention January 20, 1984 when the child's right arm was limp. Dr. Schore referred the child to an orthopedic specialist, Dr. Mandell. The doctor did not file a 3200. The doctor noted the child did have continuing feeding problems and the mother preferred finally to go back to a specialist and to have her child at Oakwood Hospital.

(8). Dr. A. Suarez, per stipulation of the counsel, qualified as a Board certified Orthopedic surgeon. The doctor observed the child, Samier, in the hospital, as well as reviewed the March 13th x-rays. The doctor based on his expertise found five areas of fractures, being the right humerus which is the upper right arm; the left upper tibia, which is the area between the knee and the ankle, the distal and middle left femur which is the area between the head and the knee and the left clavicle which is the collarbone. The doctor, based on his experience, found the left clavicle probably to be the oldest fracture more than one to two weeks of age. The child had no pain in any other part for previous fractures were evidenced. Based on doctor's expert testimony, the Court concluded that the child or anyone close to the child would or should notice the injury to the child. The doctor would place, on the outside, the injuries at the age of 3 weeks, at most, more likely 1-2 weeks.

(9). Based on the testimony of Dr. David Osher who was qualified as an expert radiologist by counsel and who took the x-rays of the child and who wrote a report for the medical records March 14, 1984, the Court concludes that there was extensive periostal new bone formation. The observations of the new bone formation in conjunction with the observation of the healing fractures leads the Court to find that these fractures did occur and are of differing ages.

(10). Based on the testimony of Donna Sabo who is qualified as an expert medical social worker based on her education and 10 years experience, the Court finds that the hospital filed one 3200 initially on the observation of the bites on the child's body and then a second 3200 as a result of the discovery of the fractures. Ms. Sabo confirmed the mother continues to be concerned over her child from birth and that she claimed the child jumped out of her during the C-Section. Ms. Sabo never interviewed the father regarding any explanation. Ms. Sabo acknowledged that the mother is very concerned for her baby. Through the efforts of Ms. Sabo, the siblings were examined and they had no signs of physical abuse. All three children were up-to-date on their shots and physicals. The mother did not, initially, provide the name of the babysitter to the hospital as she had sworn on the Koran not to revealed the name of the babysitter. The mother subsequently revealed the babysitter's name.

(11). The mother, Rehab Amer, testified that her child, Samier, was always different. That he jumped from her stomach and screamed on the second day. The mother wondered why the child cried all the time. The mother took her children to Dr. Schore and to other persons. She even had to force feed her baby with a dropper in order to get him to eat. The mother tried various kinds of formulas and feedings and finally resorted asking that the child be put into the hospital. The mother is willing to work, and has been willing to work with Ms. Rumman of the International Institute.

The mother was responsible for the sole care of the child. She did not have her husband watch the baby alone. The mother knows about the fractures, but has no explanation for the fractures. The mother's position is that she loves her baby and why would she keep talking to a doctor if she had harmed her child.

(12). Ellen Rumann, a licensed master social worker with the International Institute specializes in providing counseling in the Arab community. Ms. Rumman has visited the mother and baby and relatives in the family home. She found there to be good respect between the mother and father with a strong family network. She notes that Mrs. Amer wishes to follow her own mother's footsteps as a good mother. Mrs. Amer's mother raised 14 children. Mrs. Rumann saw a warm relationship between the mother and the child, Samier. The mother also responded appropriately to her other children. Mrs. Rumann acknowledged that discipline is part of the cultural background and that hitting is a sign of caring within the Amers ethnic group.

(13). Dr. Ruth Day was qualified as an expert in psychiatry based on her education and experience and she saw the family on two occasions. Dr. Day's evaluation was somewhat limited due to the fact that not all family members are fluent in English. Mr. Amer provided some translation for the aunt, who is the child's caretaker. Dr. Day acknowledged that there was something wrong with the child, Samier, which would have been caught by the various doctors who viewed the child. Dr. Day found the mother to be carrying a very heavy burden raising three children under the age of one year, having sole responsibility and having no relief with any babysitter. The child was comfortable in the care and custody of his father. The child, Mohammed, is an independent child and has no unusual signs in his behavior. Dr. Day believes it is necessary to have an interpreter to assist the family in preparing a final treatment plan. Dr. Day concludes that the mother, more likely, had a particular fixation on this particular child and the doctor acknowledged that the mother was substantially overworked. Dr. Day recommends against return of the child at this time, to the care of his parents.

CONCLUSIONS OF LAW

(1). The Court has jurisdiction over the subject matter and the parties.

(2). The allegations made in the Petition filed April 2, 1984 pursuant to MCL 712A.2(b) have been substantiated, and the parents wish an adjournment to present further dispositional testimony.

THEREFORE, IT IS RECOMMENDED THAT Samier Amer be made a temporary Court ward, continued in the care of his aunt, Mrs. Ayach under the temporary placement Order of shelter care or suitable relative placement under the Family Treatment Unit supervision, with the case continued to October 31, 1984 at 9:00a.m., a the parents' request for further dispositional testimony.

APPENDIX J

APPENDIX K

...believe that was possible with the extent of the injury, is that correct?

A No, sir.

Q Now, if the child had in some fashion, say for instance, been standing on a chair and fallen into the bathtub, what would be your opinion about that?

A If it is a fall it has to be about two or three stories high. That kind of height would generate enough speed when the head hits the ground. It had to be that kind and not just a chair.

Q Doctor, are you saying there would be no possibility in your mind that an injury from falling off a chair into the bathtub?

A No.

Q Of a two year old child?

A No, sir.

Q In your examination of the child did you notice any other type of injuries other than the injury to the cheek that you mentioned?

A I don't see any other injuries.

Q If you had information that this child either in the past had either bruised easily would that have helped in your examination?

MR. LADD: Objection, Your Honor. I think Mr. Goldberg is offering something that there's no support...

APPENDIX L

VERDICT FORM

_X_ Not Guilty

___ Guilty of Second Degree Murder

___ Guilty of Voluntary Manslaughter

___ Guilty of Involuntary Manslaughter

Signed: S/
Foreperson

FILED
JAMES R.
KILLEEN
WAYNE
COUNTY CLERK
AUG 13 1986
S/

Dated:

APPENDIX M

UNIVERSITY OF MICHIGAN MEDICAL CENTER
C.S. MOTT CHILDREN'S HOSPITAL
Section of Pediatric Genetics
D1225, Box 0718, Ann Arbor, Michigan 48109-0010

Robert P. Kelch, M.D.
Professor and Chairman
Physician-in-Chief
(313)764-5173

Robert P. Erickson, M.D
Director
(313) 764-0579

1 July 1986

Mr. and Mrs. Ahmed Amer
7430 Kentucky
Dearborn, MI 48126

Dear Mr. and Mrs. Amer:

We had an opportunity to meet you and examine your children (Suheir and Mohammed Ali) at the Pediatric Genetics Clinic on March 21, 1986 and June 6, 1986. Your question to us was whether or not your deceased son (Sameer) had a genetic bone disease predisposing him to multiple fractures. We would like to first review with you what we learned from the old medical records that we received:

1) Sameer was transferred to Detroit Children's Hospital in coma, after being intubated at Oakwood Hospital. Examination of both eyes showed multiple bilateral retinal hemorrhages.

Skeletal survey showed two large skull fractures whose edges were separated by 3-4 mm. The autopsy report confirmed the presence of the skull fracture with subdural hematoma and brain contusion. It was the coroner's opinion that the head was moving at a great speed and hit a fixed object.

2) On January 20, 1985, on admission to Botsford Hospital, x-rays of both shoulders and humeri showed the presence of an impacted fracture in the region of the right humeral head. Also, another fracture was detected at the middle of the left clavicle.

3) On admission to Oakwood Hospital (December 3, 1984), Sameer had a bone survey which showed healing fractures of the right humerus and left proximal tibia. In addition there was new bone formation along the medial side of the left femur. At that time physical examination showed the presence of "human" superficial bites on both soles of the feet, the left torso and in the interscapular region.

4) On January 3, 1986, Mohammed Ali had normal bone x-rays done at Detroit Children's Hospital.

5) On January 30, 1986, Suheir had a skeletal survey that showed increased density on the lateral aspect of the proximal left tibia. It was repeated two weeks later and the same density was seen again. It suggested an old trauma but no fracture was seen.

During the last clinic visit we examined your children, Mohammed Ali and Suheir. Your son had negative physical examination. Suheir's physical examination showed mild blue sclerae and a small bony prominence on the anterior aspect of the left tibia. There was no tenderness. Your family history is negative for any identifiable bone disease, and neither of you has blue sclerae or history of recurrent bone fractures, or hearing problems.

Based on the above history, physical examination, and review of old medical records, we cannot make the diagnosis of osteogenesis imperfecta.

Unfortunately, there is no specific genetic test for the majority of patients suspected to have this disease. Usually diagnosis is made by clinical history, positive family history and x-ray findings.

We are sorry that we can't be of further help to you.

Sincerely,

Majed Dasouki, M.D.
Pediatric Genetics Fellow

Robert P. Erickson, M.D., Director
Division of Pediatric Genetics
Professor of Pediatrics and Human Genetics

MD/jfo

APPENDIX N

AFFIDAVIT OF REHAB AMER

STATE OF MICHIGAN)
)ss.
COUNTY OF WASHTENAW)

Rehab Amer, being first duly sworn, depose and says as follows:

1. I am one of the Appellants in the within case, and I have read the foregoing Application for Leave to Appeal and all facts and allegations set forth therein are true to the best of my knowledge and belief.

2. After I discovered medical experts who could review our case, I attempted to obtain medical records for our children from hospitals and health care providers who had treated them.

3. I was always thwarted in my efforts to obtain medical records because the records included notations that I had killed my son and that I therefore had no further rights to free access to medical information.

4. Our attorney during the probate court proceedings in the 1980's obtained a court order requiring our children to be evaluated for brittle bone disease; however, the DSS informed the doctor that our suspicion of brittle bone disease was simply a ruse to deflect attention from our alleged culpability.

5. As a result, the evaluation of the children at the

University of Michigan Hospital lasted approximately 10-15 minutes and consisted of the most cursory examination of the children, unassisted by any x-rays or blood tests or other metabolic screens.

6. After I met Michael Martin, he volunteered to assist us in obtaining medical records, In fact, he sent a request to the hospitals on his stationery (referring to his organization, Research and prevention of Abuse), and to our utter amazement, the hospitals voluntarily produced the medical records.

7. We supplied the medical records we obtained in early 1994 through Mr. Martin's request, as well as the medical examiner's report, to the various medical experts we had discovered and then obtained their opinion regarding the cause of our son's death.

8. In early 1995, one of the doctors requested that we obtain a copy of Samier's head x-rays taken by the Wayne County Medical Examiner.

9. The Wayne County Medical Examiner, however, refused to comply with a request for records filed under the Freedom of information Act through our attorneys.

10. As a result of the Medical Examiner's refusal to produce the records requested, we filed an action against the Wayne County Medical Examiner in the Wayne County Circuit Court to compel production of the records.

11. The Wayne County Medical Examiner offered a proposed affidavit to the Wayne County Circuit Court representing that after a search of some 80 boxes of stored documents, Samier's x-rays could not be found.

12. Based on this representation, the Wayne County Circuit Court dismissed our complaint against the Wayne County Medical Examiner.

13. We believe that Judge Amy Hathaway was very sympathetic to our predicament and knew that the medical evidence we now have would rebut any allegations of abuse and neglect of Samier or the other children by us.

14. Further, we believe that Judge Amy Hathaway understood why there was a delay in filing for a rehearing based on the newly discovered medical evidence and that she did not find our petition for a rehearing to be "untimely" under the circumstances.

FURTHER DEPONENT SAYETH NOT.

S/ 9-12-96

Before me, a Notary Public in and for said County, on the 12th day of September, 1996, personally appeared Rehab Amer, known to me to be the person above subscribed, and executed and acknowledged this Affidavit of her own free will and deed.

S/
Notary Public
Washtenaw County, Michigan
My commission expires:____________

APPENDIX O

PROVIDENCE HOSPITAL 305-2
SOUTHFIELD, MICHIGAN
CLINICAL PROGRESS RECORD

0562957-1
AMER, REHAB
MR1025534 BONCZAK
DR COHEN / SHAPIRO

DATE 12/11/86 Social Work
11:00 AM. s/o Spoke to Kim Gunter (876-6089), foster care worker. Mo. had expressed desire to S.W. & Nsg. for infant to be tested for osteogenesis imperfecta. This wker. informed Ms. Gunter of the requests & she stated she would have the child tested. This worker informed Mo.

P Continue to moniter & assist as necessary

M. Mueller, ___

APPENDIX P

PROVIDENCE HOSPITAL
SOUTHFIELD, MICHIGAN
CLINICAL PROGRESS RECORD

0562957-1
AMER, REHAB
MR1025534 BONCZAK
DR COHEN / SHAPIRO

DATE 12/10/86 Social Work
2:30 pm s/o. Wker. spoke to P.S. wker- Pat Lawson
She plans to pick up baby within the
next 2 hours, will bring "placement
papers". She will inform parents that baby
is leaving. This wker spoke to nsg
staff who will give PS. wker discharge
instructions. Security will be available
for discharge
P. Wker to facillitate baby's discharge
Visit to parents as necessary to deal
__ feelings re:placement.
M. Mueller, ACS_

12/10/86 4:30 p Baby taken by P.S. for foster care
placement. Mother visiting _ baby prior
to baby's discharge. Mother crying openly
states she is going to "call her lawyer"
7:00 p. Pt's mother visiting at bedside.
speaking softly.
8:30 Pm. ____ Demerol 75 mg & Vestaril 25 mg
___ for c/o occasional discomfort ________

sleeping quietly __ farther _____ @
present. _____

12/10 11:50 p Med for c/o occasional pain ___
Demerol

75 + Vestaril 25 mg ___ 11:50pm ______

APPENDIX Q

William Beaumont Hospital - Ferndale Clinic Division
Medical Records Reports

Name of Patient	Patient No.	Room No.	Date
Amer, Zinabe 12/9/86	181 93 23	Ferndale	9/3/87

Dr. Roumayah

Left Fifth Finger:

Three views of the left fifth finger show, what is apparently, a mild palmar angulation of the distal aspect of the proximal phalanx. No periosteal reaction or fracture line is noted, however. No definite soft tissue swelling is identified. The other phalanges have a normal appearance.

CONCLUSION: There is a very mild anterior angulation of the distal aspect of the left fifth phalanx. No periosteal reaction, fracture line or evidence of a green stick type fracture is noted at this time. It is uncertain whether this represents a healed injury or a congenital abnormality. Clinical correlation and possible follow-up examination are recommended, if indicated.

M. Edwards, M.D.
Radiologist

House Officer

Signature of Attending Physician

Typed by	Date	Name of Report
ME:djs	D: Sept. 3, 1987 T: Sept. 3, 1987	X-Ray Report

Amer, Zinabe A.
23465 Vassan, Hazel Park, MI 48030

Dr. Magnell
9 mos.(12/9/86)
Page One

Case History: September 21, 1987 cb

Referring Physician: None
This patient is a nine month old ~~gentleman~~ lady who is seen today for an increasing deformity in the area of the left little finger. This patient is a young lady. She is an adopted child, so we do not have her past history. They are not sure whether the deformity of the finger was at birth. They have noticed it in the last month or so.
Examination:
On examination today, my basic finding is what appears to be a camptodactyly of the left little finger. Interestingly enough, passively I can bring this into full extension. The digit is held at about sixty degrees of flexion at the mid-joint.

X-rays are not helpful, these are brought with the patient and are dated 9/3/87.

My feeling would be to try a course of splinting techniques with the therapist, and we will see if this does not resolve. Arrangements are made to have this carried out, and I would like to see this young lady back in about three months.

10/26/87 (illegible hand written notes).

12/16/87 (illegible hand written notes).

APPENDIX R

...be a proper placement, at that time, talk with their attorney, Ms. Breen and she will contact the other attorneys for the child and for the parents. I believe there's going to be a stipulation at that time to have those people investigated or report from the psychiatrist.

The parents are also to provide names and addresses of Lebanese, Arabic names for foster care licensing potential and for potential placement of the children.

The Court as well as the attorneys for the child and the State are very concerned with the young child; that there not be too much psychological damage done. The reason the Court is not returning to the parents at this time is because the deceased child was an abuse ward at a very young age with multiple broken bones in various stages. So, the Court is extremely concerned.

It's my ultimate objective to return the children to the parents as quickly as possible with the caveat that those children remain safe.

The children will remain in Foster Care. The family shall continue in family therapy ant that Mohammed Ali also be involved in individual therapy.

Is there anything I forgot?

MS. BREEN: Your Honor, will reports from the parents therapists be made available to the Department of Social Services?

MR. LONGO: Certainly.

MS. BREEN: We would ask to be part of the order

APPENDIX S

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

Dr. Ralph Epstein, being duly sworn deposes and says that the annexed document was prepared and typed by him and that the contents are true. He submits this document in support of the motion for peremptory reversal of Judge Barsamian's order terminating the parental rights of Rehab and Ahmed Amer.

S/
DR. RALPH EPSTEIN

Sworn to before me
this 27 day of
June, 1989.
S/
Notary Public

LORETTA T. LEWINS
NOTARY PUBLIC
STATE OF MICHIGAN
WAYNE COUNTY
MY COMMISSION EXP.
APR 20, 1993

Ridgewood Psychology Centre
1317 South Washington, Royal Oak, Michigan, 48067, (313)
399-2716

CONFIDENTIAL

To Whom It May Concern:

On approximately June 17, 1987, I received a phone call from Ms. Elyse Fine from the Judson Center (Royal Oak), State of Michigan. Ms. Fine was interested in referring a Mrs. Amer who "had killed her young child" but refused to acknowledge this crime. The purpose of psychotherapy would be to facilitate the admission of the killing. When I inquired about previous legal proceedings, Ms. Fine explained Mrs. Amer had been found "not guilty" in a trial in Circuit Court. Subsequent to my explaining that it would be unethical for me to function on behalf of the State by assuming the guilt of a potential client who had been found in a court of law to be free of guilt, Ms. Fine expressed disappointment at my response. She would have to reconsider referring Mr. and Mrs. Amer to me for treatment. I expressed bewilderment that a legally exonerated person would have to acknowledge guilt of a child murder--and this acknowledgement would be a treatment goal. Ms. Fine replied that such admission of guilt could facilitate rehabilitation of the parents and reunification with children in foster homes. I felt that Ms. Fine would probably refer the Amers to another therapist since I did not agree with her stated objectives.

The conversation with Ms. Fine shocked me for several reasons: 1) it is antithetical to basic principles of justice for a person deemed "not guilty" of a crime by a court of law to be treated (punished?) as though the verdict has been "guilty". This was evidenced by the removal of the Amers' surviving children and placement in foster homes; 2) I was being asked by a professional to suspend my independent judgment and professional autonomy and function on behalf of parties who were intent on trampling the civil rights of my potential clients. This type of collusion between professionals and courts, government bodies had been associated in my mind with totalitarian governments.

II. On July 14, 1987, I received a phone call from Martha Carey of the Judson Center for the purpose of informing me of an upcoming deposition regarding re-uniting the Amers with their children who were in foster home placement. Ms. Carey inquired about my feelings regarding the deposition, my availability and whether or not the Judson Center could provide support for the deposition. She also gave me the name for the prosecuting attorney for me to contact in order to set up a time for the deposition which would be more convenient to meet than the scheduled one. There was also mention of a release of information signed by the Amers. I thanked Ms. Carey for the offer of "help". On July 13, 1987, Joseph Lango, attorney-at-law, called my office to state deposition had been adjourned.

My personal sense of this phone call was that it constituted a manipulative attempt to ascertain my testimony and to influence it in a direction favorable to the Judson Center's workers' belief that the Amers were unfit to care for their children insofar as they had not admitted to responsibility for the death of Samier.

III. On October 8, 1987, I met with Kim Gunther and Denise Hartsell from the Department of Social Services, State of Michigan. This meeting was held in my office at Ridgewood Psychology Centre, Royal Oak, MI. Gunther and Hartsell stated the Amers had been referred to me for one specific reason, namely, to admit or to acknowledge that one or both parents killed their child, Samier, either intentionally or due to loss of control. Their responsibility for the death of Samier is documented by the coroner's report. Ms. Amer was deemed not guilty in Circuit Court, but Probate Court is not obliged to accept this verdict. These workers said they had arrived to find out whether or not 1) the Amers had admitted to the killing, 2) can they be rehabilitated? I responded there is a feeling of responsibility. These workers stated that is insufficient. The death was not accidental. In response to my question, "Why is an admission of guilt required to get their children returned?", Gunther and Hartsell indicated the admission would lead to rehabilitation.

There ensued brief discussion of the history of this case. When asked why they were so convinced of Mrs. Amer's guilt, Ms. Gunther replied: 1) during the Court hearings, the Amers' answers were too pat, 2) Mrs. Amer's adamant refusal to admit she killed Samier, 3) the parents appear to be "uptight" when their current children are nervous during visits, 4) Ms. Amer described the deceased child, Samier, as different from the other children and more difficult to take care of, 5) during play therapy Mohammed Ali referred to a "bloody baby".

The child case workers also indicated that the Amers mistakenly believe that attending Parents Anonymous, psychotherapy will result in reunification with their children. This is not so. Reunification depends on the judge and an admission of culpability in the death of Samier. Furthermore, if Mr. Amer is the guilty party, he could not be prosecuted.

My private thoughts after this meeting was that it might be a flagrant violation of civil liberties, constitutional rights for a juvenile court, private agency such as Judson Center and a State agency (Social Services), to connive to punish parents although a circuit court had exonerated them of a criminal offense. The punishment would be loss of children unless the parents admitted to the crime.

IV. Upon learning from the Amers that the Judson Center personnel were displeased with the frequency of my reports, I called Denise Hartsell to explore this matter on October 27, 1987. Ms. Hartsell indicated my reports would be helpful, especially if they indicated progress had been made in influencing the Amers to recognize, acknowledge, or admit responsibility for the death of their son, Samier.

My personal reaction was that quite consistently, personnel from the Judson Center were not interested in an unbiased, objective assessment on my part. Rather, I was viewed as a pawn or foot soldier, whose obligation was not to his clients, but rather to carry out the purposes and strategies of an agency eager to get confirmation of the Amers' guilt. A Catch 22 as implied here in the sense that the Amers could be punished by permanent separation from their children if they pleaded innocence of homicide or guilty (i.e., thereby providing evidence that they are unfit parents for having engaged in criminal activity).

V. Contacts with Mr. William Ladd, Attorney-At-Law.

On May 10, 1988, I received a phone call from Mr. William Ladd, the children's attorney from the Juvenile Court. He informed me that prior to my court appearance in Juvenile Court, I was obligated to discuss my testimony with him. After I declined to do so, Mr. Ladd stated that a refusal to discuss the Amer case with him prior to my court testimony would make me ineligible to testify in court. Again, I refused to discuss the Amer case. Mr. Ladd then referred to me as "disingenuous" and inquired about my professional qualifications. I pointed out that my background would most likely be revealed during the upcoming court hearing.

My personal feelings were that Mr. Ladd's behavior was both unprofessional and unethical in terms of 1) a belligerent, harassing approach toward me, 2) lying in terms of my potential ineligibility to testify unless I first reported to him.

Subsequently, while I sat in court prior to the hearing, Mr. Ladd repeatedly and persistently attempted to find out how I would testify. He stopped this harassment after I firmly insisted he refrain from this activity.

VI. The Probate Court's decision to terminate parental contact with their three children was a tragic one. No claim had ever been made or demonstrated that the Amers had abused, neglected or rejected these children. During their foster placement, the Amers made intense efforts to maintain optimal contact with their children. Furthermore, since the Amers' contacts with the three children were abruptly terminated without any emotional preparation of the children for this obviously traumatic separation, the emotional consequences to the children can only be adversely severe. This separation replicates the sudden, traumatic removal of Zinabe on the part of the police from the household--and event occurring in Zinabe's early infancy. The inhumanity of this event speaks for itself.

S/
Ralph Epstein, Ph.D.
Licensed Psychologist

6/22/89

pd

APPENDIX T

...skull over the back of the head, bleeding in the head, and contusions of the brain. That there was one impact to the back of the head, the pattern, the extent of the injuries indicated that the head was moving at a great velocity and struck a fixed object, and the manner of death was classified as homicide.

Judge Maher, after listening to extensive testimony, came to the conclusion that Samier Amer was killed. That he did not fall in a bathtub, as had been stated by the parents. That this child, or the nature of the injuries, indicated that this child could not have done this to himself. That it would have required an adult to administer the injury that caused death.

Now in that house that night were only two adults, the father and the mother. And based on the testimony presented to Judge Maher, it is clear to me, in reviewing his transcript, that what Judge Maher found on that occasion that one of these parents killed their child intentionally, and the other one is protecting that parent. Because of that kind of a finding then, when the court intervened relative to the other children, the court cannot just ignore that which has transpired in the past. Perhaps if the case had initially came to the court as the death, the killing, that might have been more plausible or, you know, we all want to believe that parents can't do these things to their children. But in this case you had a severe injury, unexplained, cannot be caused by the child, and then the death.

14 (page break)

That could not have been inflicted by the child or the other children in the family.

So Judge Maher, in the course of his disposition, set forth the guidelines that the court has read in terms of trying to achieve return of these children to the parent or parents. And what he basically did at that point was turn it over to the Department of Social Services and say here is what I want to see happen, and expecting the Department then to follow through on seeing that the treatment plan, again, which is goal-oriented, was followed.

And again, it seems that the parents have done everything we've asked them to do. And they've gone to Parents Anonymous. They have done everything, but the one thing they have not done is that one goal set forth in Exhibit 5 relating to the acknowledgment of the killing of their child by one of them.

Now, in reviewing the testimony presented by the various professionals, and we've had many, all with a lot of experience, all well-intended. and I guess initially I was disappointed that the therapist that we referred the Amers to wouldn't deal with the issue that they had been referred there to deal with, but instead, other issues were dealt with.

The depression, Mr. Baver talked about dealing with depression. Dr. Epstein talked about dealing with the stress, the grief problems of separation from other children, problems dealing with child care workers. They dealt with a lot...

APPENDIX U

...goal that needs to be achieved.

I guess what happened here is what happens in many of our cases. Parents participate, they cooperate, they do whatever the court wants them to do, but they fail to internalize. They're unable to take what's been said to them and benefit by it. And I think that's what happened here.

Now, as the court has indicated, we don't know who killed this child. We know that somebody killed this child. So while one parent is not as culpable as the other, but the other one, who is culpable, continues to support the one who is , and therefore, is not able to provide a safe environment for this child. And in fact, when the child Samier was returned after the first incident, was not able to protect that child. So that ultimately the child was killed.

So it's the court's belief that there cannot be return of these children to these parents short of verbalization of guilt, and that the experiential acceptance of responsibility has failed in the past, and there is no reason to believe it's going to work in the future. And if we test that at this point, what we're doing is, we're testing at the risk of the life of Mohammed, Suehier, and Zinabe. And I think that's an inappropriate request on the part of this court as to those children.

So the matter comes before the court based on the unfitness of the parents, and it would appear based on our...

APPENDIX V

THE CHILDREN'S
MEDICAL CENTER
One Children's Plaza, Dayton, Ohio 45404-1815
513-226-8300

March 15, 1995

Deborah Paruch
Attorney-At-Law
515 N. Glenhurst Drive
Birmingham, MI 48009

RE: Samier Amer
DOB: November 11, 1983

Dear Ms. Paruch:

This is a statement of my findings in the case of Samier Amer based on the materials that you have sent me which include the following:

1. The medical records from Oakwood Hospital.
2. The physician reports by Dr. Schore, Dr. Mandell and Dr. Johnson.
3. Medical records from children's Hospital in Detroit, MI.
4. Statement by Mrs. Amer and Mike Martin.
5. The autopsy report by Dr. Kanluen.
6. The transcript of Dr. Kanluen's testimony.
7. Social history prepared by Steven Rose.
8. Psychiatric evaluation by Dr. Al-Najjar.

9. Reports from Nancy Adadow.
10. Reports from Dr. Epstein.
11. Reports from Dr. Blush.
12. Psychiatric evaluations from Children's Hospital of Michigan.

Samier was born on November 11, 1983 to a 21 year old, married, Arabic, female who was Gravida II. Her previous pregnancy was by Cesarean delivery. The present pregnancy was noted to be twins and it was a Cesarean delivery at 38 weeks gestation. Samier was Twin A and weighed 6 pounds and 11 ounces and was 19 inches long. His Apgar scores were 9 and 9. Twin B was a female named Suehier and weighed 7 pounds and 13 ounces and had Apgars of 9 and 10.

Mrs. Amer noted that Samier cried whenever he was picked up or touched, while his co-twin sister, Suehier, did not. On November 20, 1983 Dr. Johnson examined the twins and Mrs. Amer stated her concerns about Samier to him and he reassured her. Dr. Schore saw Samier on December 7, 1983 where Mrs. Amer again stated her concern about Amer's fussiness and apparent pain whenever he was touched. There were never any cutaneous signs of child abuse.

On January 20, 1984 Samier was brought to Dr. Schore's office with a temperature of 100" rectal and the mother noted that he had a limp right arm. They were immediately referred to Dr. Mandell of Botsford General Hospital and the child was noted to have an impacted fracture of the right shoulder and this was immobilized. The infant was seen by Dr. Schore on January 26, 1984 at which time he stated the parents denied any evidence of abusing their son nor any history of trauma. They had no explanation of how the child sustained the shoulder fracture. On January 30, 1984 Samier was seen by Dr. Mandell on a follow up visit at which time he noted marked proliferate callous and improved motion of the shoulder.

On January 30, 1984 a blood test at Botsford Hospital indicated mild anemia and hypogammagloublinemia and the mother was instructed to bring Samier back for weekly gamma globulin injections and he was treated with oral iron. Samier was examined at Dr. Schore's office on February 6, 13 and 20th at which time he was given gamma globulin. He notes that the mother continued to complain of difficulty feeding and he notes no evidence of any child abuse and continued weight gain.

Notes from Dr. Johnson, apparently from February 27, although the date is not entirely clear, show that the mother presented with Samier for decreased eating and crying a lot and was thought to have a feeding problem and there was a formula change. His weight on February 27, 1984 was 11 pounds and 13 ounces. On March 6, 1984 he was seen again at which time his weight was 11 pounds and 10 ounces, and again a feeding problem was noted and he was changed from SAM with iron to Nutramagen. Six days later on March 12, 1984 he was again seen because of a decreasing appetite and at that time the physician noted some suspicious superficial bite marks and referred him to Oakwood Hospital for admission. At that time it is noted that both he and his sister had a previous hospital admission at Botsford Hospital at approximately two months of age for a "Blood infection" and were treated with intravenous therapy. On this admission it was noted that there were superficial bites on both soles of Samier's feet, the left torso and the interscapular region. Physical examination was otherwise unremarkable. A bone survey was performed because of the suspicion of child abuse and it demonstrated healing fractures of the right humerus and left proximal tibia and there was suspicion of periosteal new bone formation along the left femur.

There apparently was also a left clavicle fracture per Dr. Schwarez, the orthopedic surgeon. Skull x-rays were reported to be normal. Calcium and phosphorous levels are reported to be normal. He was discharged on March 27, 1984, gaining weight and in no distress, and he was released into the custody of the Child Protective Services. The family underwent rehabilitation and Samier was returned to the family in October, 1985.

On November 21, 1985 Mrs. Amer was giving her son, Samier, a bath. Her husband was asleep and when she heard the phone ring she immediately went to pick the phone up, so as to not awaken her husband. While she was picking the phone up, she heard a bang and rushed back to the bathroom and found her son laying on his back in the bathtub. She immediately gave him CPR and he started to breath and she called her husband for assistance. Emergency personnel were notified and they came and took the child to Oakwood Hospital, at which time the child was noted to have a cardiopulmonary arrest. On physical exam he had a bruise on his left check. He was then transferred to the Children's Hospital of Michigan at which time he was comatose with no response to deep pain or pin prick. He was noted to have retinal hemorrhages. An EEG was flat and he was declared brain dead. He had a normal chest x-ray. The skull x-ray showed a large, diastatic skull fracture extending from the lambdoid suture toward the foramen magnum, a second transverse fracture was noted passing transversely across the occipital bone. Long bone survey and hand x-rays showed no evidence of fractures.

On November 23, 1985 an autopsy was performed by Dr. Kanluen He notes a small bruise on the left cheek. There was a contusion over the occipital region of the head and a stellate fracture radiating from the occipital area into the left posterior cranial fossa and into the occipital bone to the right parietal bone of the skull. There was contusion with subarachnoid hemorrhage of the cerebellum and tip of the occipital lobe and there was a contusion of the inferior surface of both of the frontal loves of the brain. There was minimal subdural hematoma of both frontal lobes. Dr. Kanluen's conclusion was that Samier died of blunt injuries to the head and classified his death as homicide.

The multiple psychological profiles and psychiatric examinations that had been done on Mr. and Mrs. Amer are consisted with the parents being reasonable individuals who clearly do not fit the profile of child abusers.

Family history shows there was an older brother, Mohamed Ali, in which there had never been any concerns about child abuse. A sister, Zanub, was born after the twins.

My overall impression is that Samier Amer was most likely not abused and that the fractures that he incurred prior to his death were secondary to a brittle bone disease. In addition his unfortunate demise can be explained from a fall off in the bathroom with his head hitting the floor and causing a coup/contrecoup injury to the brain, and it is not clear to me why the medical examiner necessarily thought this was homicide.

It is very clear from Mrs. Amer's diary of events that transpired that Samier Amer was clearly different from his co-twin sister, Suehier. The mother states that Samier was very fussy an apparently was in pain whenever he was touched or picked up, whereas his co-twin sister had a much more normal reaction to being handled. In addition it is noted Samier was one of co-twins and that he had evidence of anemia during the first several months of life. The entity, transient brittle bone disease, had been described by Dr. Colin Paterson in infants, and is associated with twinning and anemia. This, coupled with very dramatic history of the infant feeling pain since he was born, suggest to me that he had some type of intrinsic bone disease since birth. Moreover there is no compelling evidence that these parents have a profile child abusers on multiple evaluations.

I therefore believe the weight of evidence suggest that this child had an intrinsic bone disease and that his ultimate demise was probably secondary to an accidental fall in which he received a cerebral contusion.

Sincerely yours,
S/
Marvin R. Miller, M.D.
Director
Department of Medical Genetics
and Birth Defects

Telephone #: 513-226-8408
FAX #: 513-463-5325

S/ 3/15/95
BETTY L. SALYERS, Notary Public
In and For the State of Ohio
My Commission Expires Sept 29, 1999

APPENDIX W

Michigan Court Rules
RULE 5.992 REHEARINGS

(A) Time and Grounds. A party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after decision of disposition or supplemental disposition. The court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously considered to the court, or presented but not previously considered by the court, which if true, would cause the court to reconsider the case.

(B) Notice. All parties must be given notice of the motion in accordance with Rule 5.9220

(C) Response by Parties. Any response by paries must be in writing and filed with the court and opposing parties within 7 days after notice of the motion.

(D) Procedure. The judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the court in its discretion finds appropriate for the case.

(E) Hearings. The court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings and, at the discretion of thecourt, may be assigned to the person who conducted the hearing. The court shall state the reasons for its decision of the motion on the record or in writing.

(F) Stay. The court may stay any order, or grant bail to a detained juvenile, pending a ruling on the motion.

[Adopted effective January 1, 1988]

APPENDIX X

Michigan Compiled Laws
712A.21.Petition for rehearing; supplemental disposition orders

Sec. 21. (1) At and time while the juvenile is under the jurisdiction of the court, an interested person may file a petition *** in writing and under oath *** for a rehearing upon all matters coming within the provisions of this chapter. Upon the rehearing, the court may affirm, modify, or set aside and order *** reviewed under this section. If parental rights have been terminated by an order entered in the proceedings and custody of the juvenile has been removed from the parents, guardian, or other person, the petition for rehearing shall be filed not later than 20 days after the date of entry of the order terminating parental rights. The petition shall set forth in detail the place, manner, and all other information requested by the court in reference to the proposed future custody of the juvenile. The rehearing shall be conducted in accordance with the provisions of this chapter relating to the conduct of original hearings. The court may enter an order for supplemental disposition while the juvenile remains under the court's jurisdiction***

(2) This section does not apple to a criminal proceeding under this chapter.

(3) As used in subsection (1), "interested person" includes a member of a local foster care review board established under Act No. 422 of the Public Acts of 1984, being sections 722.131 to 722.140 of the Michigan Compiled Laws, to which that juvenile's case has been assigned.

Amended by P.A. 1996, No. 262, section 1, Eff. Jan. 1, 1997.

APPENDIX Y

Michigan Court Rules

RULE 1.104 STATUTORY PRACTICE PROVISIONS

Rules of practice set forth in any statute, if not in conflict with any of these rules, are effective until superseded by rules adopted by the Supreme Court.

[Effective March 1, 1985.]

APPENDIX Z

Michigan Compiled Laws
712A.2. Family division of circuit court; authority and jurisdiction

...(b) Jurisdiction in proceedings concerning any juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to proved proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. as used in this subdivision:

(A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and any psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(B) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the Juvenile with proper care and maintenance.

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, or other custodian, is an unfit place for the juvenile to live in.

(3) Whose parent has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 424a of the revised probate code, Act No.

642 of the Public Acts of 1978, being section 700.424a of the Michigan Compiled Laws, regarding the juvenile.

(4) Whose parent has substantially failed, without good cause, to comply with a court-structured plan described in section 424b or 424c of the revised probate code, Act No. 642 of the Public Acts of 1978, being sections 700.424b and 700.424c of the Michigan Compiled Laws, regarding the juvenile.

(5) If the juvenile has a guardian under the revised probate code, Act No. 642 of the Public Acts of 1978, being sections 700.1 to 700.993 of the Michigan Compiled Laws, and the juvenile's parent meets both of the following criteria:

(A) The parent, having the ability to support or assist in supporting the juvenile, has failed or neglected, without good cause, to provide regular and substantial support for the juvenile for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.

(B) The parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition.

If a petition is filed in the court alleging that a juvenile is within the provisions of subdivision (b)(1), (2), (3), (4), or (5), and the custody of that juvenile is subject to the prior or continuing order of another court or record of this state, the manner of notice to the other court of record and the authority of the *** court to proceed is governed by rule of the supreme court.

APPENDIX AA

UNITED STATES CODE ANNOTATED
TITLE 29, LABOR
CHAPTER 16- VOCATIONAL REHABILITATION AND OTHER REHABILITATION SERVICES
SUBCHAPTER V--RIGHTS AND ADVOCACY

§ 794. Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier that the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all the operations of--

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 8801 of Title 20) system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(I) if assistance is extended to such corporation, partnership, private organization, or an entire sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be considered with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title 1 of the Americans with Disabilities Act or 1990 (42 U.S.C. 12111 et seq.) and the provision of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

APPENDIX BB

CODE OF FEDERAL REGULATIONS
TITLE 28-- JUDICIAL ADMINISTRATION
CHAPTER 1-- DEPARTMENT OF JUSTICE
PART 42-- NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES
SUBPART G-- NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS-- IMPLEMENTATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973
PROGRAM ACCESSABILITY

Current through August 1, 1997; 62 FR 41794

§ 42.520 Discriminations prohibited.

Recipients shall insure that no qualified handicapped person is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program receiving Federal financial assistance because the recipient's facilities are inaccessible to or unusable by handicapped persons.

§ 42.521 Existing facilities.

(a) Program accessibility. A recipient shall operate each program to which this subpart applies so that the program, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This section does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) Compliance procedures. A recipient may comply with the requirement of paragraph (a) of this section through acquisition or redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities, or any other method that results in making its program accessible to its program accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among methods for meeting the requirement of paragraph (a), a recipient shall give priority to those methods that offer programs to handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program.

APPENDIX CC

UNITED STATES CODE ANNOTATED
TITLE 42.THE PUBLIC HEALTH AND WELFARE
CHAPTER 126--EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES
SUBCHAPTER II--PUBIC SERVICES
PART A--PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

APPENDIX DD

CODE OF FEDERAL REGULATIONS
TITLE 28-- JUDICIAL ADMINISTRATION
CHAPTER I-- DEPARTMENT OF JUSTICE
PART 35-- NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES
SUBPART D-- PROGRAM ACCESSIBILITY
Current through August 1 1997; 62 FR 41794

§ 35.150 Existing facilities.

(a) General. A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not--

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities:

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a

public entity has the burden of proving that compliance with §35.150 (a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(b) Methods--

(1) General. A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of §35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. * * *

APPENDIX EE

UNITED STATES COURT ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 126-- EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

§ 12102. Definitions

As used in this chapter:

(1) Auxiliary aids and services

The term "auxiliary aids and services" includes--

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability

The term "disability" means, with respect to an individual--

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such impairment; or

(C) being regarded as having such impairment.

(3) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

APPENDIX FF

UNITED STATES CODE ANNOTATED
TITLE 29. LABOR
CHAPTER 16 -- VOCATIONAL REHABILITATION AND OTHER REHABILITATION SERVICES
GENERAL PROVISIONS

§ 706. Definitions

For the purposes of this chapter:

* * *

(B) Subject to subparagraphs (C), (D), (E), and (F), the term "individual with a disability" means, for purposes of sections 701, 713, and 714 of this title, and subchapters II, IV, V, and VII of this chapter, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.